The Loan and Trust Corporations Act

a draft for consultation

Ontario
Ministry of
Consumer and
Commercial
Relations

June, 1985

TO ALL INTERESTED PERSONS

The Loan and Trust Corporations Act, A Draft for Consultation, is being circulated with the intent of soliciting comments and suggestions on the legislative proposals made. While the Draft reflects the current policy approach of the Ministry, it is by no means intended to be the final stage in the development of new loan and trust corporation law for Ontario.

In dealing with new legislation of significance to a specific industry and to the public at large, it is important to take the opportunity to gain the views and suggestions of those who will be affected. It is for this reason that the Consultation Draft is being made available for scrut y and response.

The Financial Institutions Division the Ministry of Consumer and Commercial Relations looks forward to receiving comments and suggested changes.

Those who wish to respond to the Consultation Draft are urged to do so before the deadline of August 1, 1985. Please address comments in writing to:

Consultation Draft
Financial Institutions Division
Ministry of Consumer and Commercial Relations
555 Yonge Street, 6th Floor
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Additional copies of the Consultation Draft may be obtained from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8.

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DISCUSSION

I Background and Consultation to Date

The trust companies issue commanded considerable legislative, media and public interest in late 1982 and early 1983. The events of that period underlined the need to update the Loan and Trust Corporations Act, many sections of which had been unchanged since 1912. As a result, a document entitled "Proposals for Revision of the Loan and Trust Corporation Legislation and Administration", in White Paper form, was released to the public on November 7, 1983. It received wide circulation and was considered in detail by the Standing Committee on the Administration of Justice during the months of January, February and March, 1984. This Committee of the Ontario Legislature responded with a report released in May, 1984, which concluded:

> "There are few recommendations in the White Paper with which the Committee completely disagrees, but approval of many recommendations is tempered by a general concern that they provide for too much regulation and grant too much discretionary authority to the Registrar."

The theme of the Standing Committee's report was that new, clear legislation should express 1) less emphasis on discretionary regulation and more on managerial and professional responsibility 2) consistency in application and 3) increased public disclosure of information. The report appended a minority report calling for the creation of a depositors director.

Following the release of the report, the Financial Institutions Division of the Ministry of Consumer and Commercial Relations embarked on an informal consultation process in order to explore several key policy issues.

During the summer and fall of 1984, there were numerous meetings at the Ministerial level, at senior levels in provincial and federal governments and with the industry.

II Interim Report of the Ontario Task Force on Financial Institutions

Released in January 1985, the Ontario Task Force interim report raises important and broad questions to be addressed in relation to financial institutions. As well, it specifically focuses on the need for effective self-dealing rules in the Loan and Trust Corporations Act. The five policy recommendations outlined in Appendix "A" are generally reflected in the language of the Draft. Two important recommendations of the Task Force are mirrored in the Consultation Draft: the prohibition against self-dealing in real estate and the need for directors to leave meetings when any matter involving their self-interest is dealt with.

In some areas, the rules against self-dealing are even more strict in the Consultation Draft than those proposed by the Task Force. For example, loans to restricted parties are prohibited rather than permitted subject to quantum limits. Some flexibility is available, however, through regulation-making power. Like the Task Force report, the Consultation Draft emphasizes the necessity of proving market value where exceptions from self-dealing rules are permitted.

III Major Issues

A. General Principles

The Consultation Draft of the Loan and Trust Corporations Act is based on the following seven broad principles derived from the White Paper, the Standing Committee's report, the Ontario Task Force Interim Report and the policy consultation process to date:

Maintenance of Public Confidence in the Industry

The Consultation Draft is premised on the assumption that where there is a choice between maintenance of public confidence in the industry and some other worthy goal, such as greater competitive capacity in registered corporations or de-regulation, the conflict must be resolved in favour of maintenance of the overall integrity of the system. It must be borne in mind that although depositors receive a defined level of protection under the Canada Deposit Insurance Corporation Act, the insurance system cannot afford many failures. Of equal or perhaps of greater importance to the industry,

public confidence would be so eroded by failures that it in turn might trigger more problems. In some cases, this realization may lead to a more conservative approach, such as the maintenance of the list of "approved investments" or it may lead to greater regulatory involvement. The goal is to balance what is required to serve the public and what is excessive. The proposed Loan and Trust Corporations Act reflects less intervention and more defined regulator discretion than the White Paper but may still be characterized as strong but appropriate regulatory legislation.

Equality of Application to Federal, Ontario and Provincial Corporations

In the present Loan and Trust Corporations Act, Ontario incorporated corporations are regulated in a different manner than Ontario registered federal or extra-provincial corporations. To ensure equal protection for all depositors and a relatively equal competitive market place for corporations, it is proposed that all corporations operating in Ontario be required to adhere to essentially the same rules (the "equals approach"). The legislation will be properly confined to the regulation of the "business" of loan and trust corporations and the registration system will be the focus for the equal application of rules. This approach necessarily involves more regulatory resources and good co-operation with other jurisdictions.

Without this "equals approach" - the same rules for all corporations in business in Ontario - it would be impossible to adequately protect Ontario depositors. Ontario would then be in the unenviable position of having public expectation that protection will be provided without having the tools to do so. Regulation of all companies in business in Ontario was strongly supported by the Standing Committee.

Strong Board of Directors Responsibility

In the White Paper hearings before the Standing Committee on the Administration of Justice and in that Committee's report, it was emphasized that management must be responsible for the corporation under its control and that civil servants should not regulate in a manner that supplants or erodes the board of directors

functions. The proposed Act has focused on the board as the centre of corporate responsibility. As a result, requirements for outside directors have been introduced and a new standard and duty of care and certain non-delegatable functions have been given to the board (e.g. approval for prudent investment standards, approval of exceptions regarding conflict of interest). These provisions are all designed to enhance the board as the controlling entity and to emphasize the personal responsibilities of directors. Of course, the board will have responsiblity to ensure adequate systems exist, not to actually do everything directly. This responsibility is intended to stress public protection by corporations themselves, not just by regulators.

Ministry proposals do not incorporate a "depositors director" outlined in a minority report of the Standing Committee. The Ministry has taken the position that it was better to make depositor protection a responsibility of the whole board and bring in one-third outside directors, instead of relying on one person. That one person could too easily be over-ruled or ignored and other directors could be tempted to disregard their obligations to depositors on the grounds that a "depositors director" exists to perform that function.

Emphasis on managerial responsibility for loan and trust corporations leads to a focus on the board of directors. To make them an effective balance against possible inappropriate actions by corporations, it was felt that the composition and duties of the board should reflect higher expectations. As a result, the Consultation Draft outlines substantial changes for directors of loan and trust corporations. First, there is a combination of a new standard and duty of care. Directors must exercise "the care, diligence and skill of a reasonably prudent director in comparable circumstances" and when considering "whether a particular transaction or course of action is in the best interests of the corporation as a whole, shall have due regard to the interests of depositors as well as the shareholders of the corporation." The duty of care is new in Canadian law, although based on provisions from the UK Companies Act. It may be argued that in some cases, the interests of depositors and shareholders are opposed, thus putting the directors in a difficult position in reconciling these differences. On the other hand, it appears that strengthening board responsibility will accomplish little for depositors if there is no direction to boards to consider depositor interests.

The outside director rule introduced in the Draft is similar to the Ontario Business Corporations Act rule. However, the definition of an outside director is much more strict, excluding, for example, past officers or employees (within two years). Limits on cross-directorships are introduced, which restrict an individual to the directorship of only one registered corporation (other than an affiliated corporation), similar to rules in the Bank Act. Lastly, directors will be required to adhere to strict rules when conflicts arise; for example, leaving the room when discussion and voting takes place on a matter involving the director. This is consistent with a recommendation of the Ontario Task Force on Financial Institutions.

Rejection of the 10% Ownership Option in Favour of Strong Conflict of Interest Rules and Managerial Responsibility

Under the Bank Act, ownership of shares in Schedule "A" banks is restricted to 10% in any one owner although Schedule "B" Banks may be wholly-owned subsidiaries. It has been suggested that a 10% share restriction would obviate temptation in conflict of interest situations as no one person would substantially benefit with shareholdings so diffuse. It should be noted that the 10 per cent rule for banks is not entirely directed at conflict of interest; it came about partly to control concentration of economic power in any one individual and partly due to concerns about foreign ownership of such powerful economic entities. The issues are not relevant for the much smaller Canadian-based financial institutions regulated under the Loan and Trust Corporations Act. The trust companies themselves do not generally appear to favour this position, although some have expressed support. The approach was not adopted in the White Paper or in the Standing Committee's report.

The Consultation Draft alternative to the 10% ownership rule has been strict conflict of interest or self-dealing rules, emphasis on board of directors responsibility and enhancing public disclosure for registered corporations, whether they are closely or widely-held. The reality is that some group controls a corporation and that group must be governed by conflict of interest rules, managerial responsibility and disclosure requirements.

The Control of Self-Dealing: The Introduction of Strong Conflict of Interest Rules

Persons who may have the ability to direct a corporation toward actions which personally benefit them to the possible detriment of the corporation and its depositors will be subject to strict controls. In most cases, there will be a strict prohibition on transactions between such persons and the loan or trust corporation particularly in relation to real estate, an area targeted by the Ontario Task Force as an area of major concern. Exemptions will exist for minor items such as mortgages to employees, a common practice in the financial institutions industry. Other non-arm's length dealings will be subject to controls such as full disclosure, prior board of director's approval, establishing market value and the creation of an onus on the parties to demonstrate the best interests of the corporation were served. Conflict of interest control will also be pursued by some restrictions on cross-directorships, segregation of the sensitive commercial lending area from other activities and the extension of special rules to the voting of corporation or affiliate shares held in Estates, Trust or Agency (ETA) accounts.

Introduction of a Stronger Regulatory Approach

The present Loan and Trust Corporations Act suffers from having little or no capacity to deal with developing problems. The proposed Act will permit intervention at an earlier level with responses more appropriate to the type of problem involved. It will require greater regulatory vigilance as the availability of tools will lead to public expectation that they be used. The Consultation Draft is developed, however, with the continuous awareness that excessive intervention and over-regulation is to be avoided. Part of the safeguards in the system is a new hearings and appeal system, more consistent with modern concepts of administrative fairness.

Appropriate Transitional and Exception Provisions to the New Rules

When a major regulatory authority is overhauled, it is necessary to provide for a transitional period for certain provisions, and in some limited cases to provide for permanent exceptions or "grandfathering". Throughout the Consultation Draft effort has been made to identify those areas where transitional provisions should be permitted or those few areas where exceptions might be needed.

B. Specific Provisions

The general principles set the context in which the Loan and Trust Corporations Act has been developed. What follows is a more detailed discussion of approaches to specific elements in the Consultation Draft:

Use of the Name "Trust"

The "trust deposit" relationship is a desirable one for depositors because the money is segregated and there is priority over ordinary creditors. There are restrictions on investments. The concept stresses high standards of prudence and good faith and is consistent with provincial regulation. Ontario would permit a company using this deposit-taking relationship to use the name "trust" provided it had $10 million in capital and could otherwise demonstrate capacity and capability. Companies operating in a local market that do not meet the capital requirement may also be permitted to use the name "trust."

Capital Levels

The following capital levels are in the Consultation Draft:

$ 5 million for a loan corporation
(reflects CDIC requirements for new registrants)

$10 million for a trust corporation

$15 million for commercial lending

A five year transition period is proposed for existing registrants with an exemption available for trust corporations operating in a local or regional market. These trust corporations would still be required to have a minimum capital of $5 million.

"Earning" New Powers

The Consultation Draft is based on a system in which companies must "earn" their right to expand in size and activities by demonstrating competence and responsibility. All new companies will start as loan corporations and may work their way up to trust corporations. Certain powers and lending opportunities will be approved only when capital levels, staffing and track record demonstrate the capacity to expand. Borrowing multiples will be increased on the same principle.

ETA - Estates, Trust and Agency Services

Several new provisions are contained in the Consultation Draft in relation to Estates, Trust and Agency Services of trust corporations. Corporations wishing to enter this sensitive area will require Superintendent[1]. consent to enter and expand into new areas (e.g. pension funds). Corporations will be required to make the availability of such services prominently known. Emphasis will be placed on segregation of ETA business from financial intermediation. In particular, corporations will be refused permission to do commercial lending if they cannot demonstrate adequate segregation between the ETA and commercial lending areas. New provisions related to conflict of interest or self-dealing are proposed: when a trust company takes on trusts containing 10% or more of its own or affiliate shares, only the Board of Directors may decide on voting, disposing of or refusing bids on such shares, unless the trust instrument or courts direct otherwise. Corporations acting as trustees cannot otherwise purchase shares in themselves or in affiliates unless the trust instrument or courts specifically direct.

Outside Directors

A minimum five director board is outlined in the Consultation Draft. It will be mandatory to have one third of a board of directors as "outside directors". The outside directors would provide greater objectivity in board deliberations, introduce external experience, contacts, a long-range perspective and protect minority shareholders. "Outside" directors would not be:

- current or past (within 2 years) employees or officers of the corporation or affiliates
- 10% or more shareholders of the corporation or its affiliates
- any relative of the individuals mentioned above

A one year transition period will be provided for corporations to comply with new rules on board of directors composition.

Duty of Care for Directors

The new Consultation Draft introduces a new statutory duty of care for directors:

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1. The wider term "Superintendent" replaces the term "Registrar", which suggested only a licensing function.

> In considering whether a particular transaction or course of action is in the best interests of the corporation as a whole, a director shall have due regard to the interests of the depositors as well as the shareholders of the corporation.

This duty stresses the significance of the depositors to the corporation and appropriate correlative responsibility. This duty of care would be a considerable innovation in Canadian corporate law.

Standard of Care for Directors

The Consultation Draft provides that directors "exercise the care, diligence and skill of a reasonably prudent director in comparable circumstances." This test is different from the "prudent person" test found in most corporate statutes. It is intended that this test reflects a greater standard necessary for deposit-taking institutions.

Expansion of Investment Potential

In essence, the new Consultation Draft proposes retention and expansion of existing investment provisions. However, instead of having a discretionary 7% "open basket" consisting of investments not otherwise authorized, an as-of-right 5% "open basket" will be given to all corporations. In addition, there will be investment expansion available in specialized areas with Superintendent consent and in the case of commercial lending, with a $15 million minimum capital requirement. It is felt that only larger corporations can afford the staff, segregation and potential risks in commercial lending. A summary of the investment latitude given would be as follows:

- at least 50% in "trustee investments"[2].
- 5% open basket
- a maximum of 10% consumer lending[3].
- a maximum of 10% commercial leasing
- a maximum of 10% commercial lending

} with Superintendent approval

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2. Government bonds, first mortgages, cash, deposits in financial institutions.

3. Loans for personal use, $25,000 or the individual's annual income, whichever is greater.

The rest of the investments would be in other permitted investments listed in the Consultation Draft, subject in some cases to certain quantum or parcel limits.

Self-Dealing: Restricted Parties

There would be an expanded group of persons who would be covered by rules against self-dealing. These are officers and directors, their spouses and children, employees, shareholders of more than 10% of the shares of the corporation or affiliates, their spouses and children, affiliates, companies controlled by certain restricted parties. There would be power to deem a person a restricted party under certain circumstances and a general test as to circumstances in which a person might be considered a restricted party even if not meeting the strict criteria of the Consultation Draft definition of restricted party.

Conflict of Interest - Prohibited Activities

The Consultation Draft proposes to cover a wider range of activities in the conflict of interest or self-dealing rules. Covered will be all investments, loans, sales, purchases, contracts, leases, service and management contracts and finders' fees.

Rules Against Self-Dealing

Activities with restricted parties will be prohibited subject to limited exemptions. Where exemptions are permitted, there must be full disclosure and usually board of directors approval. Exemptions can be summarized as: employee mortgage loans on principal residences to a maximum of one half of one percent of the corporation's capital base for each loan; employee consumer loans; insignificant purchases or sales; purchases or sales of goods or leases if in the best interests of the corporation and at fair rates as documented; management or services contracts; employment contacts. The onus of demonstrating that a transaction is a good one and meets statutory tests such as market value is on the corporation and restricted parties.

Limits on Cross-Directorships

The proposal is that individuals should not serve on the board of more than one registrant unless the corporations are affiliates. As well, no non-affiliated company may hold more than one-fifth of the director positions in a registered corporation.

Outside Advisors

Outside advisors such as auditors, lawyers and appraisers will be required to report conflicts of interest or self-dealing situations to the board of directors. They will be required not to act if there is an identified conflict of interest. Where a conflict is not acted on by the board of directors, auditors would be required to report to the Superintendent. Those who report in good faith would be protected from civil action. The reporting requirements will not affect existing solicitor-client privilege.

Prudent Investment Standards

The Consultation Draft requires loan and trust corporations to develop and maintain written, board-approved standards outlining appropriate investment practices. These standards should be designed to protect the interests of depositors. Each corporation will have somewhat different standards, given size and other factors. For example, a small corporation might require CEO approval for a loan over $1 million whereas a larger corporation may not need it until the $10 million mark is reached. Practices regarding outside appraisals, etc. would be documented so that regulators would be aware of any divergence from usual practices. The "prudent investment standards" are in addition to legislative requirements limiting investments to a specific list.

Valuation

The "market value" test will be used -- "the amount that might be expected to be realized if sold in the open market in an arms-length transaction by a willing sellor to a willing buyer". "Lending value for mortgage purposes" will be defined as "market value" reduced by speculative or uncertain factors and multiplied by seventy-five per cent or a lesser amount if this would be prudent. In addition, every corporation will be required to adhere to "prudent investment standards" that are written and approved by the board of directors.

Public Disclosure Vehicles

The Consultation Draft provides for mechanisms of increased disclosure for all corporations, not just those publicly traded. This will be done by creation of a public file, an expanded annual shareholders statement, periodic reports of key indices, industry-wide statistical reporting and Superintendent-ordered disclosure. Details appropriate for regulations will be worked out after consultation and the new disclosure system will be phased in over time through regulations.

Maintenance of Orders in Council for Central Decisions

Orders in Council are maintained for incorporation, moving from a loan to trust company, mergers, maintenance of certain investments, possession and control. It was felt that the responsibility of Cabinet should continue in certain key areas. Borrowing multiples, approved by Cabinet under the current Act, are seen as more appropriately a regulator-level decision and are not maintained as Orders in Council in the Consultation Draft.

Enforceable Voluntary Compliance Program

This enforcement option would allow a corporation to develop its own program for compliance but permit Superintendent action if the program is not followed. One area where the program could be used is during the transitional period to assist corporations in conforming to the new legislation.

Director's[4] Orders

Where violations of the Act take place or conditions arise prejudicial to depositors, specific rectification measures are provided in the Consultation Draft to be ordered to have immediate effect in emergencies or to be in effect after exhaustion of administrative appeal routes. Examples of orders might include disposal of improper investments, capital increases or ceasing of certain practices.

Superintendent Approvals

The Consultation Draft provides in key areas that the Superintendent can give approval with or without conditions or withhold approval for certain activities. Examples are approval of ETA activities, approval of initial registration, approval of expansion into "investment baskets" and approval of 10% share transfers.

A New Superintendent Investigation Power

The Consultation Draft proposes Superintendent-ordered investigation powers similar to those found under the Ontario Securities Act.

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4. The Director is the Director of Loan and Trust Corporations Branch, reporting to the Superintendent.

Court Access for Rehabilitation

Where the Superintendent is in possession and control of a corporation, the Consultation Draft provides that he or she should get Court direction and approval for actions in dealing with the corporation while in possession and control.

Civil Remedies

The Consultation Draft would provide civil remedies such as tracing or recovery of assets through derivative actions and oppression remedies similar to those under the Ontario Business Corporations Act.

Hearings and Appeals

Where any remedial action is taken or ordered by the Director or Superintendent, hearing opportunities (either before or after action) will be provided for the corporation under the Consultation Draft. Judicial review is also available. This will modernize procedures in the Act, consistent with current thinking regarding administrative fairness. Appeals will be available from Director - level decisions and will be to a three person Panel consisting of the Superintendent and two outside individuals appointed by the Minister. The institution of opportunities for review of administrative decisions is an important step in that corporations will have the assurance that any administrative action will be subject to procedures designed to ensure an opportunity to be heard. These procedures, to some extent, limit absolute regulatory discretion. It should be noted that the Panel replaces the appeal function of the Commissioner put forward in the White Paper. A Minister's advisory council replaces the Commissioner's advisory functions.

Possession and Control

The Consultation Draft maintains the system of immediate possession and control by Order in Council, without prior notice or hearing to a body other than the Lieutenant Governor in Council. A subsequent petition to Cabinet is provided. As possession and control is authorized by the Lieutenant Governor in Council, there is the protection afforded by the consideration of this body. Possession and control is an exceptional remedy and unlikely to be used frequently, especially with the new regulatory powers outlined in the Consultation Draft.

Mutual Fund Regulation

The Consultation Draft would make changes to the Securities Act by bringing "pooled trusts" under Ontario Securities Commission jurisdiction over mutual funds. The Commission has the expertise and staff to supervise the development of these vehicles and it is felt that these pooled trusts, which are essentially mutual funds by another name, should be regulated under the Securities Act, not the Loan and Trust Corporations Act.

IV Conclusion

It is worth reiterating that it is still a privilege, not a right, to carry on the business of a loan or trust corporation in Ontario. While the Consultation Draft gives wider investment opportunities to registered corporations and modernizes many outdated features of existing legislation, there is still a strong focus on depositor protection. That focus is articulated through greater emphasis on managerial and professional responsibility, on strong conflict of interest rules to prevent self-dealing, on investment checks and on capacity for regulator intervention aimed at specific problems.

Recalling an important statement in the White Paper, the Consultation Draft attempts to strike a happy medium between needed regulator control and needed business latitude. That White Paper statement said:

> As the purpose of the [loan and trust corporation] industry is to serve the public by providing competively priced financial services in response to customer needs and demands, it is important that requirements to protect the system and public depositors from abuse not interfere with the ability of the responsible members of the industry to carry on their business. This means that new laws and administration must, to the maximum extent practicable, not increase the burdens or restrictions on those in the industry who are conducting their business with prudence and are behaving in full recognition of their legal and fiduciary obligations.

The preceeding discussion of policy issues that have found their way into the Consultation Draft is intended as a key to the thinking that lies behind various provisions of that Draft. While not an exhaustive survey of every matter considered, it is intended to aid readers of the Consultation Draft in understanding the policy principles that have led to this legislative proposal. Most issues have been resolved by balancing competing policy interests to develop a moderate, practical, yet strong legislative approach to the regulation of the loan and trust corporation industry in Ontario.

Appendix "A"

Interim Report of The Ontario Task Force on Financial Institutions

Recommendations Related to the Loan and Trust Corporations Act

Revisions to the Loan and Trust Corporations Act should include:

(i) A prohibition against self-dealing in real property;

(ii) A prohibition against self-dealing in all other transactions except where a generally prevailing market price for homogeneous products, investments or services, based upon independent contemporaneous transactions, is readily available;

(iii) A limitation (to be established by regulations developed by reference to the practices adopted by independent investors) on the amount of investment which a loan or trust company may hold in the securities of any company in a position to exercise influence over it or associated directly or indirectly with such a company;

(iv) A limitation on the amount of any loan which a loan or trust company may make to any company in a position to exercise influence over it or associated directly or indirectly with such a company so that a very limited proportion of the assets of the trust company could be so loaned.

and

The Loan and Trust Corporations Act should have a requirement that directors having a conflict of interest on any matter shall not be present when such a matter is being discussed or voted upon by the directors.

NOTES

Draft Loan and Trust Corporations Act

PART I

INTERPRETATION AND APPLICATION

Interpretation

1. In this Act,

1. "accountant" means a person who is a member of The Canadian Institute of Chartered Accountants and includes a partnership of which the partners are members of The Canadian Institute of Chartered Accountants;

2. "affiliate" means a body corporate that is an affiliate within the meaning of subsection 2(1);

3. "bank" means a bank named in Schedule A or B to the Bank Act (Canada); 1980-81, c.40 (Can.)

4. "body corporate" means any body corporate with or without share capital and wherever or however incorporated;

5. "branch" means an office of a corporation where it offers services to the public or where it provides fiduciary services;

6. "capital base" means the shareholders' equity of a corporation calculated in the prescribed manner;

7. "common trust fund" means a fund maintained by a trust corporation in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment;

8. "company" means a body corporate that is not a loan corporation, a trust corporation or a municipality or any local board thereof;

9. "corporation" means a loan corporation or a trust corporation whether incorporated in or outside of Ontario;

10. "deposit", in relation to a corporation, means money received by it under section 153;

11. "depositor" means a person who has a deposit in a corporation;

12. "Director" means the Director of Loan and Trust Corporations appointed under this Act;

13. "extra-provincial corporation" means a corporation that was incorporated under the laws of Canada or of any province, other than Ontario, or of any territory of Canada;

14. "financial statement" means a statement referred to in subsection 119(1);

15. "improved real estate" means real estate,

    i. on which there exists a building used or capable of being used for residential, commercial, industrial, educational, professional, institutional, religious, charitable or recreational purposes,

    ii. on which a building capable of being used for residential, commercial, industrial, professional, institutional, educational, religious, charitable or recreational purposes is being or is about to be constructed,

    iii. on which <u>bona fide</u> farming operations are being conducted, or

    iv. vacant land within a municipality that is restricted by law in its use to commercial, industrial or residential purposes by zoning or otherwise;

16. "instrument of incorporation" means the special Act, charter or letters patent incorporating a corporation and includes all amendments thereto;

17. "law of Ontario" includes any law of the former Province of Canada or of Upper Canada, continued as the law of Ontario, or consolidated or incorporated with the law of Ontario;

18. "lending value" in relation to real estate, means the market value of the real estate reduced by an amount that represents any speculative or uncertain factors in such market value, multiplied by the lesser of,

    i. 75 per cent, or

    ii. such percentage less than 75 per cent as the corporation has determined in accordance with its prudent investment standards to be appropriate in the circumstances;

19. "loan corporation" means a body corporate incorporated or operated for the purpose of borrowing money from the public by receiving deposits and lending or investing such money but does not include a bank, an insurance corporation, a trust corporation, a credit union or caisse populaire incorporated or licensed under the Credit Unions and Caisses Populaires Act or an investment company registered under the Investment Contracts Act;

R.S.O.1980, cc.102,221

20. "market value" means the amount that might be expected to be realized in an arm's length sale in the open market by a willing seller to a willing buyer;

21. "Minister" means the Minister of Consumer and Commercial Relations or other such member of the Executive Council to whom the administration of this Act may be assigned;

22. "Ministry" means the Ministry of the Minister;

23. "mortgage" includes a charge or hypothec;

24. "offering corporation" means a corporation that is offering its securities to the public within the meaning of subsection 2(5) and that is not the subject of an order of the Ontario Securities Commission deeming it to have ceased to be offering its securities to the public;

25. "officer" means the chairman and any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager and any other person designated an officer by by-law or by resolution of the directors and any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office;

26. "principal place of business" means,

    i. in the case of a provincial corporation, the place in Ontario designated in its instrument of incorporation as its head office or as its principal place of business, and

    ii. in the case of a registered extra-provincial corporation, the place in Ontario designated in its registration as its principal place of business;

27. "prescribed" means prescribed by the regulations;

28. "provincial corporation" means a corporation incorporated under the law of Ontario;

29. "real estate" includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or

interest therein but does not include hydrocarbons or minerals in or under the ground;

30. "registered corporation" means a corporation registered under this Act;

31. "registered form", when applied to a security, means a security that,

    i. specifies a person entitled to the security or to the rights it evidences, and the transfer of which is capable of being recorded in a securities register, or

    ii. bears a statement that it is in registered form;

32. "regulations" means the regulations made under this Act;

33. "resident Canadian" means an individual who is,

    i. a Canadian citizen ordinarily resident in Canada,

    ii. a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or

    iii. a permanent resident within the meaning of the Immigration Act, 1976 (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship;

1976-77, c.52 (Can.)

34. "restricted party" means a person who with respect to a corporation is,

    i. an officer or director of the corporation,

    ii. a beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares of the corporation,

iii. a beneficial holder of 10 per cent or more of any class of non-voting shares of the corporation,

iv. a beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares of an affiliate of the corporation,

v. an affiliate of the corporation,

vi. an employee or auditor of the corporation,

vii. a director or officer of a body corporate described in subparagraph ii or iii,

viii. a spouse or child of an individual described in subparagraph i, ii, iii or iv,

ix. any relative of an individual described in subparagraph i, ii, iii or iv or his or her spouse who has the same home as such individual or spouse,

x. a body corporate in which a person described in subparagraph i, ii, iii, vi, vii or viii is the beneficial holder, directly or indirectly, of 10 per cent or more of any class of voting shares,

xi. a person designated under section 139 as a restricted party;

35. "securities register" means the register referred to in subsection 126(1);

36. "security" means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation and includes a warrant but does not include a deposit or any instrument evidencing a deposit in a corporation;

37. "special resolution" means a resolution that is,

i. submitted to a special meeting of the shareholders of a corporation duly called for the purpose of considering the resolution and passed, with or without amendment, at the meeting by at least two-thirds of the votes cast, or

ii. consented to in writing by each shareholder of the corporation entitled to vote at such a meeting or the shareholder's agent authorized in writing;

38. "spouse" means the person to whom a person of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage;

39. "subordinated note" means a note issued under section 156;

40. "Superintendent" means the Superintendent of Deposit Institutions appointed under this Act;

41. "total assets" means the shareholders' equity and deposits of a corporation, calculated in the prescribed manner;

42. "trust corporation" means a body corporate incorporated or operated for the purpose of offering its services to the public to act as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee, guardian of a minor's estate or committee of a mentally incompetent person's estate and for the purpose of receiving deposits from the public and of lending or investing such deposits;

43. "voting share" means any share of any class of shares of a body corporate carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

Deemed affiliation

2.-(1) For the purposes of this Act,

(a) a body corporate shall be deemed to be affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) the affiliates of every body corporate shall be deemed to be affiliated with all other bodies corporate with which the body corporate is affiliated.

Deemed control

(2) For the purposes of this Act, except sections 59 to 61, a body corporate shall be deemed to be controlled by a person if,

(a) securities of the body corporate to which are attached more than 50 per cent of the votes that may be cast to elect directors of the body corporate are held other than by way of security only by or for the benefit of that person; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

Deemed holding body corporate

(3) For the purposes of this Act, a body corporate shall be deemed to be the holding body corporate of all of its subsidiaries.

Deemed subsidiary

(4) For the purposes of this Act, a body corporate shall be deemed to be the subsidiary of another body corporate if it is controlled by that other body corporate.

Offering securities to public

(5) For the purposes of this Act, a body corporate is offering its securities to the public only where,

(a) in respect of any of its securities a prospectus, statement of material facts or securities exchange take-over bid or issuer bid circular has been filed under the Securities Act or any predecessor thereof, or in respect of which a prospectus has been filed under The Corporations Information Act, being chapter 72 of the Revised Statutes of Ontario, 1960, or any predecessor

R.S.O.1980, c.466

thereof, so long as any of such securities are outstanding or any securities into which such securities are converted are outstanding; or

(b) any of its securities have been at any time since the 1st day of May, 1967, listed and posted for trading on any stock exchange in Ontario recognized by the Ontario Securities Commission regardless of when such listing and posting for trading commenced,

except that where, upon the application of a body corporate that has fewer than fifteen security holders, the Ontario Securities Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as it may impose, that the body corporate shall be deemed to have ceased to be offering its securities to the public.

Related persons

(6) For the purposes of sections 62 to 69 and section 166, a person shall be deemed to be related to,

(a) every company or corporation of which the person beneficially owns, directly or indirectly, voting shares carrying more than 10 per cent of the voting rights attached to all voting securities of the company or corporation for the time being outstanding;

(b) every partner of the person;

(c) every trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity; or

(d) any spouse or child of the person or any relative of the person or the spouse who has the same home as the person.

Application of Act

3.-(1) This Act applies to all corporations unless specifically limited to provincial corporations.

Idem

(2) Where there is a conflict between a provision of the instrument of incorporation of a provincial corporation or of any special Act of Ontario in relation to any corporation and a provision of this Act or the regulations, the provision of this Act or the regulations, as the case may be, prevails.

Non-application of Act

4. This Act does not apply to a body corporate that is authorized, constituted or operated for the purpose of lending money on the security of real estate or for the purpose of investing money in mortgages, where the body corporate borrows only by way of,

(a) loans from banks in the usual course of business; or

(b) the issue of debentures, notes or like obligations of an amount not less than $100,000 each to any one person on the person's account, whereby the body corporate is not obligated or cannot by demand of the holder be obligated to repay the money secured by the debenture, note or obligation within five years from the date of its issue.

PART II

INCORPORATION AND INSTRUMENT OF INCORPORATION

Incorporation of a loan corporation

5. The Lieutenant Governor in Council may incorporate a loan corporation by the issue of letters patent upon the application of any one or more persons.

Application for incorporation

6.-(1) An application for the issue of letters patent to incorporate a loan corporation shall follow the prescribed form and shall be filed with the Superintendent together with,

(a) evidence showing that at least $5,000,000 of common shares has been subscribed for in good faith;

(b) an application to be registered as a loan corporation; and

(c) such other information, material and evidence as the form may specify.

Notices, additional information

(2) The Superintendent, upon the filing of an application for the issue of letters patent to incorporate a loan corporation,

(a) shall require notice of the application and notice of the application for registration, containing such information as the Superintendent may require, to be published by the applicant in The Ontario Gazette and in a newspaper having general circulation in the locality where the principal place of business is to be located; and

(b) may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.

Restriction on issue of letters patent

7. Letters patent for the incorporation of a loan corporation shall not be issued unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

(a) in the locality where the principal place of business of the proposed corporation is to be located, there exists a public benefit and advantage for establishing a loan corporation or an additional loan corporation;

(b) the proposed management is fit, both as to character and as to competence, to manage a loan corporation;

(c) each person subscribing for 10 per cent or more of any class of shares of the proposed corporation can demonstrate the adequacy of their financial resources;

(d) each proposed director is fit, both as to character and as to competence, to be a director of a loan corporation;

(e) the proposed plan of operations is feasible; and

(f) the proposed corporation intends to offer to the public, initially or within a reasonable time after incorporation, the services set out in the application for incorporation.

Contents of letters patent

8. The letters patent of a loan corporation shall set out,

(a) the name of the corporation;

(b) the municipality or geographic township in Ontario and the address including street name and number, if any, where, the principal place of business is to be located;

(c) the classes and any maximum number of shares that the corporation is authorized to issue and the rights, privileges, restrictions and conditions attaching to each class of shares; and

(d) the full name, address of residence, citizenship and occupation of,

(i) each of the first directors of the corporation,

(ii) every person who subscribed for 10 per cent or more of any class of shares of the corporation, and

(iii) each of the applicants.

Day of incorporation

9. A provincial loan corporation comes into existence on the day set out in its letters patent.

Supplementary letters patent

10.-(1) On the application of a provincial corporation, the Lieutenant Governor in Council may issue supplementary letters patent to amend the instrument of incorporation of the corporation,

(a) to change its name;

(b) in the case of a provincial loan corporation, to continue it as a trust corporation;

(c) in the case of a provincial trust corporation, to continue it as a loan corporation; or

(d) to change the principal place of business of a corporation;

Idem

(2) On the application of the corporations involved, the Lieutenant Governor in Council may issue supplementary letters patent to amalgamate the corporations and continue them as one provincial corporation.

Idem

(3) On the application of any provincial corporation, the Lieutenant Governor in Council may issue supplementary letters patent to amend the instrument of incorporation of the corporation to,

(a) add, change or remove any maximum number of shares that the corporation is authorized to issue;

(b) create new classes of shares;

(c) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrue dividends, in respect of all or any of its shares, whether issued or unissued;

(d) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;

(e) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(f) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;

(g) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series; and

(h) revoke, diminish or enlarge any authority conferred under clauses (f) and (g).

Special resolution

(4) No application shall be made under subsection (1) or (3) unless it has been authorized by a special resolution of the provincial corporation.

Application

(5) An application for the issue of supplementary letters patent shall follow the prescribed form and shall be filed with the Superintendent together with such information, material and evidence as the form may specify and, in the case of an application under clause (1)(b), evidence that,

(a) the stated capital account or accounts of the corporation is or are equal to or exceed $10,000,000 and the capital base of the corporation equals or exceeds $10,000,000; or

(b) one or more responsible applicants has subscribed in good faith for shares of the corporation that, when issued and added to the stated capital account and the capital base, will in both cases equal or exceed $10,000,000.

Idem

(6) An application for the issue of supplementary letters patent under clause (1)(b) or (c) shall be accompanied by an application for registration as a trust corporation or loan corporation, as the case may be.

Notice, additional information

(7) The Superintendent, upon the filing of an application for supplementary letters patent under subsection (1),

(a) shall require notice of the application, containing such information as the Superintendent may require, to be published by the applicant in The Ontario Gazette, and in a newspaper having general circulation in the locality where the principal place of business in Ontario of the corporation is located; and

(b) may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.

Rejection of application

(8) Supplementary letters patent shall not be issued,

(a) to continue a provincial loan corporation as a trust corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

(i) in the locality where the principal place of business of the corporation is to be located there exists a public benefit and advantage for the trust corporation or for an additional trust corporation,

(ii) the management of the applicant is fit, both as to character and as to competence, to manage a trust corporation,

(iii) each person subscribing for 10 per cent or more of any class of shares of the corporation or who holds, or upon the issue of the supplementary letters patent will hold, 10 per cent or more of any class of its shares can demonstrate the adequacy of their financial resources,

(iv) each director of the applicant is fit, both as to character and as to competence, to be a director of a trust corporation,

(v) the proposed plan of operations as a trust corporation is feasible, and

(vi) the corporation intends to offer to the public, initially or within a reasonable time after incorporation, the services set out in the application for supplementary letters patent;

(b) to continue a provincial trust corporation as a provincial loan corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that arrangements have been made to transfer to another registered trust corporation the business in relation to which the provincial trust corporation acted as a fiduciary and such arrangements are adequate to protect the persons in relation to which the provincial trust corporations acted in a fiduciary capacity;

(c) to change the principal place of business of a provincial corporation unless it is shown to the satisfaction of the Lieutenant Governor in Council that in the locality where the proposed principal place of business is to be located there exists a public benefit and advantage for locating the principal

place of business in the proposed location and the proposed plan of operations in the new location is feasible.

Deposits

(9) Clause (8)(b) does not apply so as to require a trust corporation that has applied to be continued as a loan corporation to transfer money received by it as deposits.

Idem

(10) Where supplementary letters patent have been issued to continue a loan corporation as a trust corporation,

(a) deposits received by the loan corporation under clause 153(1)(a) shall be deemed to be deposits received under clause 153(2)(a); and

(b) deposits received by the loan corporation under clause 153(1)(b) shall be deemed to be deposits received under clause 153(2)(b).

Idem

(11) Where supplementary letters patent have been issued to continue a trust corporation as a loan corporation,

(a) deposits received by the trust corporation under clause 153(2)(a) shall be deemed to be deposits received under clause 153(1)(a); and

(b) deposits received by the trust corporation under clause 153(2)(b) shall be deemed to be deposits received under clause 153(1)(b).

Names

11.-(1) Subject to subsection (2), letters patent or supplementary letters patent shall not be issued to a corporation that has a name,

(a) that contains a word or expression prohibited by this Act or the regulations or does not contain a word or expression required by this Act or the regulations or that in any other manner does not comply with this Act or the regulations;

(b) that is the same or similar to,

(i) the name of a known,

(A) company or corporation,

(B) trust,

(C) association,

(D) partnership,

(E) sole proprietorship, or

(F) individual,

whether in existence or not, or

(ii) the known name under which any company, corporation, trust, association, partnership, sole proprietorship or individual carries on business or identifies itself,

if the use of that name would be likely to deceive; or

(c) that in the case of a trust corporation does not include "trust corporation", "trust company" or "trustco" or "trust" and a designation such as "limited" or "incorporated".

Idem

(2) Notwithstanding clause (1)(b), a corporation may have a name described in subclause (1)(b)(i) or (ii) upon complying with such conditions as may be prescribed.

Change of name if objectionable

(3) Where, through inadvertence or otherwise, a provincial corporation has obtained a name contrary to this section, the Lieutenant Governor in Council, on the recommendation of the Superintendent, may issue supplementary letters patent changing the name of the corporation to a name specified in the supplementary letters patent.

Hearing

(4) Before making a recommendation under subsection (3), the Superintendent shall give the corporation an opportunity to be heard by him or her.

Decision is final

12.-(1) The decision of the Lieutenant Governor in Council to approve or reject an application for

letters patent or supplementary letters patent or for revival is final and not subject to appeal, but nothing in this subsection prevents an applicant from making a new application.

Notice

(2) Where the Lieutenant Governor in Council approves or rejects an application for letters patent or supplementary letters patent or for revival, the Superintendent shall forthwith notify the applicant in writing.

Powers of corporation

13. Subject to this Act and any terms, conditions and restrictions imposed on its registration, a provincial corporation,

(a) has the capacity and the rights, powers and privileges of a natural person; and

(b) has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Ontario to the extent that the laws of such jurisdiction permit.

PART III

WINDING UP, DISSOLUTION AND MERGER

Winding up

R.S.O.1980, c.95

14. Except where Part VI of the Corporations Act is inconsistent with this Act, that Part applies to the winding up of a provincial corporation, substituting the word "Superintendent" for the word "Minister".

Cancellation for non-use

15.-(1) Where a provincial corporation fails to go into bona fide operation within two years of the date of incorporation or having done, so it ceases bona fide operation for a period of two consecutive years, the Lieutenant Governor in Council, on the recommendation of the Superintendent and upon such terms and conditions as the Lieutenant Governor in Council considers appropriate, may order the cancellation of the instrument of incorporation of the corporation and it is dissolved on the date fixed in the order.

Hearing

(2) Before making a recommendation under subsection (1), the Superintendent shall give the corporation an opportunity to be heard by him or her.

Revival

(3) Where a provincial corporation has been dissolved under subsection (1), the Lieutenant Governor in Council may revive the corporation by order, upon the application therefor of any interested person.

Issue

(4) Upon the date set out in an order under subsection (3), the corporation, subject to such terms and conditions as may be set out in the order, is revived and, subject to any rights acquired by any person after the dissolution, the corporation is restored to its legal position, including all its property, rights and privileges and franchises, and is subject to all its liabilities, contracts, disabilities and debts, as of the date of its dissolution, in the same manner and to the same extent as if it had not been dissolved.

Actions after dissolution

16.-(1) Notwithstanding the dissolution of a provincial corporation under section 15,

(a) every proceeding commenced in or before any court or tribunal by or against the corporation, its officers or directors before its dissolution may be continued as if the corporation had not been dissolved;

(b) a proceeding may be brought in or before any court or tribunal against the corporation, its officers or directors within five years after its dissolution as if the corporation had not been dissolved; and

(c) all real or personal property that would have been available to satisfy any judgment or order if the corporation had not been dissolved remains available for such purpose.

Service after dissolution

(2) For the purposes of this section, the service of any process on a provincial corporation after its dissolution shall be deemed to be sufficiently made if it is made upon any person last shown on the public file referred to in section 138 as being a director or officer of the corporation before the dissolution.

Idem

(3) Where any proceeding has been brought against a provincial trust corporation after its dissolution, notice of the commencement of the proceeding, together with the originating process by which the proceeding was commenced, shall be served upon the Public Trustee.

Liability of shareholders to creditors

17.-(1) Notwithstanding the dissolution of a provincial corporation under section 15, each shareholder to whom any of its property has been distributed is liable to any person claiming under section 16 to the extent of the amount received by that shareholder upon the distribution, and a proceeding to enforce such liability may be commenced within five years after the date of the dissolution of the corporation.

Party action

(2) The court hearing an action referred to in subsection (1) may order the action to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes a claim, the court may refer the proceedings to a referee or other officer of the court.

Idem

(3) Where a reference is made under subsection (2), the referee or other officer may,

(a) add as a party to the proceedings before him or her each person who was a shareholder found by the plaintiff;

(b) determine, subject to subsection (1), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

Interpretation

(4) In this section, "shareholder" includes the heirs and legal representatives of a shareholder.

Forfeiture of undisposed property

18.-(1) All property of a provincial corporation that has not been disposed of at the date of its dissolution whether under this or any other Act is forfeit to the Crown.

Trust property

(2) All property that immediately before the dissolution of a provincial trust corporation was being held in trust by it shall be delivered forthwith by the persons who were its officers and directors before its dissolution to the Public Trustee.

Idem

(3) Where property is not delivered as required by subsection (2), the Public Trustee may do such things as may be necessary to obtain the property.

Idem

(4) All property received by the Public Trustee under subsections (2) and (3) shall be held in trust by the Public Trustee for the beneficiaries of the trusts.

Property available to satisfy order of court or tribunal

(5) Where an order is made in a proceeding referred to in section 16 and the order affects property forfeited to the Crown under subsection (1), the property shall be available to satisfy the order.

Amalgamation

19.-(1) Two or more corporations, of which at least one is a provincial corporation, may amalgamate and continue as one provincial corporation or as one extra-provincial corporation.

Asset sale

(2) A provincial corporation may sell all of its assets to any corporation in Canada if the purchasing corporation assumes all of the liabilities of the provincial corporation.

Asset purchase

(3) A provincial corporation may purchase all of the assets of any corporation in Canada if the provincial corporation assumes all of the liabilities of the vendor corporation.

Proviso re: amalgamation

(4) Subsection (1) does not apply to an extra-provincial corporation unless under the law of the jurisdiction in which it is incorporated it has the power to amalgamate with a provincial corporation.

Mandatory agreement

20.-(1) Where corporations propose to amalgamate or purchase or sell assets under section 19, each such corporation shall enter into an agreement setting out the terms and means of effecting the amalgamation or purchase and sale.

When agreement effective

(2) No agreement for the amalgamation of corporations or the purchase or sale of the assets of a corporation shall take effect until all approvals required by this Part have been given.

Contents of agreement, amalgamation

(3) Where corporations propose to amalgamate the agreement referred to in subsection (1), shall set out,

(a) the proposed name of the continuing corporation;

(b) the municipality or geographic township in Ontario and the address, including street name and number, if any, where the principal place of business of the continuing corporation is to be located;

(c) the classes of shares that the continuing corporation may issue and the rights and privileges, restrictions and conditions attaching to each class of share;

(d) the full name, address of residence, citizenship and occupation,

(i) of each of the first directors of the continuing corporation,

(ii) of every person who will hold immediately upon the amalgamation 10 per cent or more of any class of the shares of the continuing corporation; and

(e) the manner of converting the shares of the amalgamating corporations into shares of the continuing corporation.

Submission of agreement

(4) An agreement to amalgamate corporations or to purchase or sell the assets of a corporation to another corporation shall be submitted to the shareholders of each corporation for their approval at a meeting thereof to be held separately for the purpose of taking the agreement into consideration.

Submission of offer

(5) Where an offer has been made to a corporation with respect to the purchase of all of its assets and no agreement is reached, the offer, at the request of the offering corporation, shall be submitted to the shareholders of each corporation for their approval at a meeting thereof to be held separately for the purpose of taking the offer into consideration.

Notice of meeting

(6) Each corporation required by subsection (4) or (5) to hold a meeting shall deliver notice of the meeting and a copy of the agreement or offer to the Superintendent at least thirty days before the meeting.

Proceedings to approve agreement

21. At each of the meetings required by subsection 20(4) or (5), the agreement or offer shall be considered, and if at each meeting the holders of at least 50 per cent of the issued shares of the corporation for the time being carrying voting rights are present in person or

represented by proxy and the agreement or offer is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting, that fact shall be certified upon the agreement or offer by the secretary of each corporation.

Dispensing with approval

22.-(1) The Lieutenant Governor in Council, in the case of a proposed purchase of assets, may dispense with the approval of the agreement or offer by the shareholders of the purchasing corporation if the Lieutenant Governor in Council is satisfied that the shareholders, after due notice thereof, have approved a general resolution or by-law authorizing the purchase of the assets of any corporation upon the basis and within the limits specified in such agreement or offer.

When offer becomes agreement

(2) An offer to which subsection 20(5) applies shall be deemed for all purposes to be an agreement when it has been certified by the secretary of the vendor corporation under section 21 and it has either been certified by the secretary of the purchasing corporation as required by that section or the approval of the offer by the shareholders of the purchasing corporation has been dispensed with under subsection (1).

Submission to Lieutenant Governor in Council

23.-(1) If the agreement is approved and certified in accordance with section 21 by the shareholders of each of the corporations or, in the case provided for in section 22, at the meeting of shareholders of the vendor corporation, the agreement, with the certificates or certificate thereon, shall be filed with the Superintendent and the Superintendent shall submit the agreement to the Lieutenant Governor in Council for approval.

Idem

(2) In the case of an amalgamation, an agreement filed under subsection (1) shall be accompanied by an application for initial registration under subsection 31(1) for the continuing corporation and, if the continuing corporation will be a provincial corporation, by an application for supplementary letters patent.

Notice, information

(3) The Superintendent, upon the filing of an agreement and before submitting the agreement to the Lieutenant Governor in Council,

(a) shall require notice of the agreement, containing such information as the Superintendent may require, to be published by the parties to the agreement in The Ontario Gazette, and in a newspaper having general circulation in the locality where the principal place of business of each corporation is located and in the case of an amalgamation, in the locality where the principal place of business of the continuing corporation is to be located; and

(b) may require the parties to the agreement to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided by or under any other section of this Act.

Refusal of approval

(4) The Lieutenant Governor in Council shall refuse approval of the agreement unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

(a) in the case of an amalgamation,

(i) there exists a public benefit and advantage for the amalgamation of the corporations,

(ii) the proposed management is fit, both as to character and as to competence, to manage the continuing corporation,

(iii) each person who will be a holder of 10 per cent or more of any class of shares of the continuing corporation immediately after the amalgamation can demonstrate the adequacy of their financial resources,

(iv) each proposed first director is fit as to character and as to competence to be a director of the continuing corporation,

(v) the proposed plan of operations for the continuing corporation is feasible, and

(vi) the continuing corporation intends to offer to the public, initially or within a reasonable time after the amalgamation, the services set out in the amalgamation agreement;

(b) in the case of a purchase and sale of assets,

(i) there exists a public benefit and advantage if the purchase and sale is completed,

(ii) the proposed plan of operations for the purchasing corporation upon the closing of the purchase agreement is feasible;

(c) in the case where one of the parties to the agreement is a trust corporation and the continuing or purchasing corporation is a loan corporation, the arrangements referred to in subsection 29(2) are adequate to protect the persons in relation to which the trust corporation, before the approval of the agreement, is acting in a fiduciary capacity; and

(d) where the continuing corporation is a loan corporation, the continuing corporation immediately after the amalgamation will have a capital base of at least $5,000,000 or, where the continuing corporation is a trust corporation, the continuing corporation immediately after the amalgamation will have a capital base of at least $10,000,000.

Interpretation

24.-(1) In this section, "Superintendent's certificate" means a certificate issued under subsection (2).

Superintendent's certificate

(2) Where the Lieutenant Governor in Council approves an agreement submitted under subsection 23(1), the Superintendent shall issue a certificate certifying,

(a) that the approval of the Lieutenant Governor in Council has been given and the date of the approval;

(b) in the case of a purchase or sale of assets, the name of each corporation that is a party to the transaction and whether the party is a vendor or a purchaser;

(c) in the case of an amalgamation, the names of the corporations that are amalgamating, the name of the continuing corporation and the date upon which the amalgamation takes effect; and

(d) such other matters, if any, as in the opinion of the Lieutenant Governor in Council are necessary or desirable in the public interest.

Effect as evidence

(3) A Superintendent's certificate is for all purposes prima facie proof of all matters set out therein.

Notice

(4) Notice of the issue of a Superintendent's certificate shall be published in The Ontario Gazette by the Superintendent.

Certificate of Superintendent

(5) Any document signed by or purportedly signed by the Superintendent, certifying the document to be or to contain a true copy of the Superintendent's certificate or of any instrument referred to in the certificate, may be registered in any land registry office upon it being tendered for registration accompanied by the proper fee, if any.

Registration

(6) It is sufficient to register a certified copy of the Superintendent's certificate in each land registry office in which instruments affecting land or interests in land, included or intended to be included in the amalgamation or purchase and sale, are registered.

Security interest

R.S.O.1980, c.375

(7) For the purposes of the Personal Property Security Act, it is sufficient, in order to show the vesting in the continuing corporation of any interest in personal property that constitutes a security interest within the meaning of that Act and for which one of the amalgamated corporations

is shown as a secured party in any financing statement registered under that Act, for a financing change statement to be registered in respect of the vesting as if the interest had been assigned.

Assets of vendor corporation vest in purchasing corporation

25.-(1) In the case of a purchase of the assets of a corporation that has been approved by the Lieutenant Governor in Council, the assets of the vendor corporation become vested in the purchasing corporation on and from the date of the approval without any further conveyance, and the purchasing corporation thereupon becomes and is responsible for the liabilities of the vendor corporation.

Disposal of assets by purchasing corporation

(2) In dealing with the assets of the vendor corporation, it is sufficient for the purchasing corporation to recite the agreement and the assent of the Lieutenant Governor in Council thereto, with the date of assent.

Rights of creditors

26.-(1) A sale of the assets of a corporation does not affect the rights of any creditor of the vendor corporation.

Privity of contract between purchasing corporation and each creditor of vendor corporation

(2) An agreement made or purporting to be made under this Act to purchase the assets of a corporation shall be deemed to contain a covenant and agreement with each creditor of the vendor corporation that the purchasing corporation will pay to the creditor the amount of the vendor corporation's indebtedness to the creditor at such time and place as the amount would have been payable had the agreement to purchase not been made.

Dissolution of vendor corporation

(3) Where the Lieutenant Governor in Council approves an agreement for the sale of the assets of a corporation, the vendor corporation is, from the date of the approval, dissolved, except so far as is necessary to give full effect to the agreement.

Amalgamation

27.-(1) In the case of an amalgamation,

(a) if the continuing corporation is a provincial corporation, the parties to the amalgamation, from the date set out in the supplementary letters patent,

shall continue as one provincial corporation by the name stated in the certificate;

(b) if the continuing corporation is an extra-provincial corporation, every provincial corporation that is a party to the agreement is, from the effective date of the amalgamation under the laws of the jurisdiction under which the continuing corporation is incorporated, amalgamated with the other parties to the agreement and it shall continue with them as one corporation;

(c) the continuing corporation possesses all the property, rights, privileges and franchises and is subject to all liabilities, including civil, criminal and quasi-criminal liabilities, and all contracts, disabilities and debts of each of the amalgamating corporations;

(d) a conviction against, or ruling, order or judgment in favour or against an amalgamating corporation may be enforced by or against the continuing corporation;

(e) the supplementary letters patent authorizing the amalgamation are deemed to be the instrument of incorporation of the continuing corporation; and

(f) the continuing corporation shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil proceeding commenced by or against an amalgamating corporation before the amalgamation has become effective.

Continuation in another jurisdiction

(2) Where the amalgamating corporations are to continue as one extra-provincial corporation and one or more, but not all, parties to the amalgamation agreement are provincial corporations, the parties to the amalgamation agreement may apply to the proper officer of the jurisdiction specified in the amalgamation agreement for an instrument amalgamating and continuing them as one corporation under the laws of that jurisdiction and, incidental

to the application, every provincial corporation that is a party to the agreement may apply to the proper officer of that jurisdiction for an instrument continuing it as if it had been incorporated under the laws of that jurisdiction.

Acquisition of assets or amalgamation by purchase of shares

28.-(1) In addition to its powers under section 19, for the purpose of either acquiring the assets of any other corporation in Canada or amalgamating with any such corporation under this Part, a corporation may purchase not less than 67 per cent of the outstanding shares of any such corporation, subject to the following:

1. No such purchase shall be made except with the prior approval of the Lieutenant Governor in Council.

2. The Lieutenant Governor in Council shall deny approval unless it is shown to the satisfaction of the Lieutenant Governor in Council that,

   i. there exists a public benefit and advantage for the purchase,

   ii. the management of the purchasing corporation is fit both as to character and as to competence, to manage the corporation as it will exist after it completes the purchase of the assets or the amalgamation,

   iii. each person who holds 10 per cent or more of any class of shares of the purchasing corporation can demonstrate the adequacy of their financial resources,

   iv. each director is fit as to character and as to competence to be a director of the corporation as it will exist after it completes the purchase of the assets or the amalgamation, and

   v. the proposed plan of operations for the corporation as it will exist after it completes the

purchase of the assets or the amalgamation is feasible.

3. The Lieutenant Governor in Council may approve the purchase where,

   i. an offer to purchase shares has been accepted,

      A. in writing by the holders of at least 67 per cent of the outstanding shares of such other corporation, or

      B. by resolution or resolutions carried by the affirmative vote of the holders of at least 67 per cent of the outstanding shares of each class of such corporation at a general meeting of the shareholders thereof, and

   ii. the offer to purchase has been submitted to a general meeting of the shareholders of the purchasing corporation at which the holders of at least 50 per cent of the issued shares of such corporation for the time being carrying voting rights are present in person or represented by proxy and the purchase is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting.

4. A corporation may purchase shares under this section notwithstanding any other provision of this Act so long as the provisions of this section are satisfied.

5. Where a corporation has purchased shares under this section, it shall within a period of two years after the purchase has been approved by the Lieutenant Governor in Council proceed under this Part either to acquire the assets and assume the duties, obligations and liabilities of the other corporation or amalgamate with the other corporation,

but the Lieutenant Governor in Council, on being satisfied that the circumstances so warrant, may extend such period from time to time.

6. After the expiration of the period referred to in paragraph 5 and every extension thereof, the Superintendent may direct the corporation to dispose of the shares.

Consideration for shares

(2) The consideration for the shares acquired under the authority of this section may be cash or voting shares of the purchasing corporation or may be partly cash and partly voting shares of the purchasing corporation or may be such other consideration as may be agreed upon.

No power to purchase own shares

(3) Nothing in this section shall be construed as authorizing a corporation to purchase or acquire its own shares.

Application

(4) A corporation purchasing shares under this section shall file an application for the approval required by subsection (1) with the Superintendent.

Notice, information

(5) The Superintendent, upon the filing of an application for the approval required by subsection (1),

(a) shall require notice of the purchase, containing such information as the Superintendent may require, to be published by the applicant in The Ontario Gazette, and in a newspaper having general circulation in the locality where the principal place of business of each corporation is located and, in the case of an amalgamation, in the locality where the principal place of business in Ontario of the continuing corporation is to be located; and

(b) may require the parties to the agreement to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided by or under any other provision of this Act.

Interpretation

29.-(1) In this section, "acquiring corporation" means,

(a) the continuing corporation resulting from the amalgamation of one or more corporations; or

(b) a corporation that purchases the assets of another corporation,

under this Part and for the purposes of subsections (5), (6) and (7) includes a corporation that is a transferee of the business in relation to which a trust corporation that is a party to an agreement of amalgamation or purchase and sale of assets acted as a fiduciary.

Transfer of estate, trust and agency business

(2) Before making the filing with the Superintendent required by subsection 23(1), where one or more of the corporations that is a party to the amalgamation or purchase of assets is a trust corporation and the acquiring corporation is to be a loan corporation, the parties to the transaction shall make such arrangements as may be necessary to transfer to another trust corporation the business in relation to which the trust corporation acted as a fiduciary but this subsection does not apply so as to require a trust corporation to transfer to another trust corporation money received by it as deposits.

Deposits

(3) Where the acquiring corporation is,

(a) a trust corporation and one of the parties to the amalgamation or purchase of assets is a loan corporation,

(i) deposits received by the loan corporation under clause 153(1)(a) shall be deemed to be deposits received under clause 153(2)(a), and

(ii) deposits received by the loan corporation under clause 153(1)(b) shall be deemed to be deposits received under clause 153(2)(b); and

(b) a loan corporation and one of the parties to the amalgamation or purchase of assets is a trust corporation,

(i) deposits received by the trust corporation under clause 153(2)(a) shall be deemed to be deposits received under clause 153(1)(a), and

(ii) deposits received by the trust corporation under clause 153(2)(b) shall be deemed to be deposits received under clause 153(1)(b).

Trust to pass

(4) On the approval of the Lieutenant Governor in Council as provided in section 23 to the amalgamation or purchase and sale of assets,

(a) in a case to which subsection (2) applies, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the transferor of the business in relation to which the trust corporation that was a party to the amalgamation or purchase and sale is making the transfer are vested in and bind and may be enforced against the transferee as fully and effectually as if it had been originally named as the fiduciary in the instrument; and

(b) in any other case, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon the parties to the purchase and sale, or to the amalgamation, are vested in and bind and may be enforced against the acquiring corporation as fully and effectually as if it had been originally named as the fiduciary in the instrument.

Subject-matter of trust to vest in acquiring corporation

(5) Wherever in an instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the vendor corporation or of any of the amalgamating corporations as

fiduciary, the name of the acquiring corporation shall be deemed to be substituted for the name of the vendor or amalgamating corporation, and such instrument vests the subject-matter therein described in the acquiring corporation according to the tenor of, and at the time indicated or intended by the instrument, and the acquiring corporation shall be deemed to stand in the place and stead of the vendor or amalgamating corporation.

References in will or codicil

(6) Where the name of the vendor corporation or of any of the amalgamating corporations appears as executor, trustee, guardian, or curator in a will or codicil, such will or codicil shall be read, construed and enforced as if the acquiring corporation was so named therein, and it has, in respect of the will or codicil, the same status and rights as the vendor or amalgamating corporation.

Duties not completed

(7) In all probates, administrations, guardianships, curatorships or appointments of administrator or litigation guardian issued or made by any court in Ontario to the vendor corporation or to any of the amalgamated corporations, from which at the date of such assent it had not been finally discharged, the acquiring corporations shall ipso facto be substituted therefor.

PART IV

REGISTRATION

Registration

30.-(1) The duty of determining, distinguishing and registering the corporations that under this Act are required to be registered and may be acceptable for registration, and of granting registration accordingly, is upon the Superintendent.

Registers continued

(2) The registers known as the "Loan Companies' Register" and the "Trust Companies Register" are hereby continued as the "Loan Corporations' Register" and "Trust Corporations' Register", respectively.

Superintendent to keep registers

(3) The Superintendent shall keep the registers and shall cause to be recorded,

(a) in the Loan Corporations' Register, the name of each loan corporation that has been granted registration together with such terms, conditions and restrictions as may be set out by the Superintendent and such other particulars as may be prescribed; and

(b) in the Trust Corporations' Register, the name of each trust corporation that has been granted registration together with such terms, conditions and restrictions as may be set out by the Superintendent and such other particulars as may be prescribed.

Idem

(4) A corporation may be registered in either the Loan Corporations' Register or the Trust Corporations' Register.

Idem

(5) The Superintendent shall note in the appropriate register,

(a) all terms, conditions and restrictions imposed on the registration of a corporation;

(b) the fact that the registration of a corporation has been revoked or has not been renewed;

(c) the fact that a registered loan corporation has been continued as a registered trust corporation or vice versa.

Application for registration

31.-(1) A corporation duly constituted or incorporated under the laws of Ontario or of Canada or of another province or territory of Canada may apply for initial registration as a loan corporation or as a trust corporation.

Change

(2) A registered loan corporation may apply to change its registration to that of a trust corporation and a registered trust corporation may apply to change its registration to that of a loan corporation.

Idem

(3) A registered corporation may apply to amend the terms, conditions and restrictions of its registration.

Intrepretation

(4) In this section and sections 32 to 39, "application for registration" means an application under subsection (1) for initial registration, an application under subsection (2) for a change in registration or an application under subsection (3) to change terms, conditions and restrictions imposed on a registration.

Material to be furnished

(5) An application for registration shall follow the prescribed form and shall be filed with the Superintendent together with such information, material and evidence as the form may specify.

Notice, additional information

(6) Where the Superintendent receives an application for the registration, the Superintendent may require notice of the application, containing such information as the Superintendent may require, to be published by the applicant in The Ontario Gazette and in a newspaper having general circulation in the locality where the principal place of business of the corporation is located or is to be located.

Additional information

(7) Where the Superintendent receives an application for the registration of a corporation,

the Superintendent may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application.

Protection of depositors

(8) An application for registration shall be accompanied by evidence that the deposits of the corporation will from the time of registration be insured by the Canada Deposit Insurance Corporation or by some other similar public agency approved by the Superintendent up to the maximum amounts permitted by the Canada Deposit Insurance Corporation or agency.

Estate, trust and agency services

(9) An application for registration as a trust corporation shall set out the services in relation to which the corporation proposes to act in a fiduciary capacity.

Registration of extra-provincial corporations

32.-(1) Where an extra-provincial corporation applies for registration, the application shall be accompanied by a power of attorney from the corporation to an agent or agents resident in Ontario and an undertaking to the Superintendent signed by the proper corporate officers that the corporation and its subsidiaries will provide such information as the Superintendent may request and will adhere to this Act and to the terms, conditions and restrictions, if any, imposed on its registration.

Execution of power of attorney

(2) A power of attorney under this section shall be under the seal of the corporation, if applicable in the jurisdiction of incorporation of the corporation, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness.

Authentication

(3) An undertaking under this section shall be accompanied by a certified copy of the resolution of the board of directors authorizing the corporation's officers to apply for registration under this Act and authorizing the execution of the undertaking.

Contents of power of attorney

(4) A power of attorney under this section shall be in the prescribed form and shall be accompanied by the affidavit or statutory declaration of the witness referred to in subsection (2) attesting to the due execution of the power of attorney.

Effect of copy as evidence

(5) The production of a copy of a power of attorney under this section certified by the Superintendent is sufficient evidence for all purposes of the power and authority of the person or persons named therein to act on behalf of the corporation in the manner and for the purposes set forth in the certified copy.

Changes in chief agent or agency

(6) When an extra-provincial corporation changes any of its agents in Ontario, it shall forthwith file with the Superintendent a new power of attorney in the prescribed form.

Rejection of application

33. The Superintendent shall reject an application for registration,

(a) unless the capital base of the corporation is at least $5,000,000 in the case of a loan corporation and $10,000,000 in the case of a trust corporation;

(b) unless the corporation has satisfied the Superintendent that it has the capacity and power to engage in the activities of a loan corporation or a trust corporation, as the case may be;

(c) if the applicant is not a corporation described in subsection 31(1);

(d) subject to section 34, unless it is shown to the satisfaction of the Superintendent that,

(i) in the locality where the principal place of business is located or is to be located there exists a public benefit and advantage for the registration of a corporation or for an additional corporation of the kind for which registration is sought,

(ii) the management is fit, both as to character and as to competence, to manage a corporation of the kind for which registration is sought,

(iii) each person who will be a holder of 10 per cent or more of any class of shares of the applicant immediately after the registration can demonstrate the adequacy of their financial resources,

(iv) each director is fit, both as to character and as to competence, to be a director of the corporation of the kind for which registration is being sought,

(v) the proposed plan of operations of the corporation is feasible, and

(vi) the applicant intends to offer, to the public, initially or within a reasonable time after registration, the services set out in the application for registration and the applicant has the capability to provide such services; or

(e) if the Superintendent is not satisfied as to the adequacy of any information received with or in support of the application for registration.

Approval subject to conditions and restrictions

34.-(1) Where the Superintendent is not satisfied as to all of the matters referred to in clause 33(a), (b) or (d), the Superintendent in lieu of rejecting the application, may approve the application for registration of the applicant,

(a) as a corporation of a kind other than that which the application for registration was made and subject to such terms, conditions and restrictions as the Superintendent may impose; or

(b) as the kind of corporation for which the application for registration was made but subject to such terms, conditions and restrictions as the Superintendent may impose.

Hearing

(2) Before rejecting an application or before granting an application subject to terms,

conditions and restrictions, the Superintendent shall give the corporation an opportunity to be heard before him or her.

Voluntary terms and conditions

35. With the consent of the registered corporation, the Superintendent may impose terms, conditions and restrictions on the registration of a corporation or terms, conditions and restrictions in addition to those previously imposed on the registration of the corporation and subsection 34(2) does not apply to such terms, conditions and restrictions.

Cancellation of registration on request of corporation

36. At the request of a registered corporation, the Superintendent may revoke its registration subject to such terms, conditions and restrictions as the Superintendent may impose.

Names

37.-(1) Subject to subsection (2), no corporation shall be registered that has a name,

(a) that contains a word or expression prohibited by this Act or the regulations or does not contain a word or expression required by this Act or the regulations or that in any other manner does not comply with this Act or the regulations;

(b) that is the same or similar to,

(i) the name of a known,

(A) body corporate,

(B) trust,

(C) association,

(D) partnership,

(E) sole proprietorship, or

(F) individual,

whether in existence or not, or

(ii) the known name under which any body corporate, trust, association, partnership, sole proprietorship or individual carries on business or identifies itself,

if the use of that name would be likely to deceive; or

(c) that in the case of a trust corporation does not include "trust corporation", "trust company" or "trustco" or "trust" and a designation such as "limited" or "incorporated".

Idem

(2) Notwithstanding clause (1)(b), a corporation may be registered with a name described in subclause (1)(b)(i) or (ii) upon complying with such conditions as may be prescribed.

Use of different name may be required

(3) Where a corporation has a name that contravenes subsection (1), the Superintendent may register the corporation if it undertakes to either change its name to a name that does not contravene subsection (1) or if it undertakes to carry on business in Ontario under a name that does not contravene subsection (1).

Change of name

(4) Where, through inadvertence or otherwise, a corporation has obtained registration under a name that contravenes subsection (1), the Superintendent, after giving the corporation an opportunity to be heard, may order as a condition of registration that the corporation carry on business under a name specified in the order.

Transition

38.-(1) If a corporation was registered under a predecessor of this Act and the registration was valid and subsisting immediately before the coming into force of this Act, the corporation, without being registered under this Act, may continue to carry on business in Ontario for thirty days following the coming into force of this Act and thereafter it may continue to carry on business in Ontario if within that thirty-day period it files an application for initial registration under section 31.

Idem

(2) Where an application referred to in subsection (1) is filed within the thirty-day period, the corporation, without being registered under this Act, may continue to carry on business in Ontario until the day the Superintendent rejects or approves the application.

Extra-provincial corporations - conditions of registration

39.-(1) No extra-provincial corporation shall be registered unless under its instrument of incorporation, its by-laws and the laws of the jurisdiction in which it is incorporated, the corporation and its shareholders, directors, officers, employees and auditors are able to satisfy the requirements of sections 59 to 68, subsections 89(2), (3), (4) and (5), sections 90, 96, 100, 101, 102, 105, 106, 107, 108, 109 and 111 and Part VIII as if the extra-provincial corporation were a provincial corporation and those provisions, upon registration, apply to the extra-provincial corporation and its shareholders, directors, officers, employees and auditors as if the corporation were a provincial corporation.

Idem

(2) It shall be deemed to be a term of registration of every extra-provincial corporation that its registration expires forthwith if its instrument of incorporation, its by-laws or the laws of the jurisdiction in which it was incorporated are amended so that the persons referred to in subsection (1) are not able to satisfy the provisions of this Act referred to in that subsection.

Idem

(3) Where the Superintendent is of the opinion that the depositors of an extra-provincial corporation are adequately protected in some other way, the Superintendent may register an extra-provincial corporation that would be unable to satisfy any of the provisions of this Act referred to in subsection (1) without being in contravention of the laws of the jurisdiction in which in is incorporated.

PART V

SHARES AND SHAREHOLDERS

Deemed liability

40. For the purposes of sections 47, 48, 50 and 54, deposits in a trust corporation shall be deemed to be a liability of the corporation notwithstanding that the deposit is held by it as trustee.

Shares

41.-(1) Shares of a provincial corporation shall be in registered form and shall be without nominal or par value.

Idem

(2) Shares with a nominal or par value of a provincial corporation incorporated before the day this section comes into force shall be deemed to be shares without nominal or par value.

Common shares

42.-(1) Every provincial corporation shall have a class of shares designated as "common shares" in which the rights of the holders thereof are equal in all respects and shall include,

(a) the right to vote at all meetings of shareholders;

(b) the right to receive the remaining property of the corporation upon dissolution; and

(c) the right to receive dividends of the corporation if declared on such shares.

Other classes of shares

(2) Classes of shares in addition to common shares may be provided for in the instrument of incorporation and the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the instrument of incorporation but such shares shall not be designated as "common shares" or by any variation of that term.

Issuance of shares

(3) Subject to this Act and the instrument of incorporation, shares may be issued at such time

and to such persons and for such consideration as the directors may determine.

Shares non-assessable

(4) Shares issued by a provincial corporation are non-assessable and the holders are not liable to the provincial corporation or to its creditors in respect thereof.

Fully paid shares

(5) On and after the day this section comes into force, a share in a provincial corporation shall not be issued until the consideration for the share is fully paid in Canadian dollars.

Separate capital account

43.-(1) A provincial corporation shall maintain a separate stated capital account for each class and series of shares it issues.

Idem

(2) A provincial corporation shall add to the appropriate stated capital account in respect of any shares it issues the full amount of the consideration it receives as determined by the directors.

Limitation on additions to stated capital account

(3) On the issue of a share, a provincial corporation shall not add to a stated capital account in respect of the share an amount greater than the amount referred to in subsection (2).

Transition

(4) Notwithstanding subsection (2), on the day this Act comes into force, the amount in the stated capital account maintained by a provincial corporation in respect of each class or series of shares then issued shall be equal to the aggregate amount paid up on the shares of each such class or series of shares immediately prior thereto, and a provincial corporation may, upon complying with subsection (5), add to the stated capital account maintained by it in respect of any class or series of shares any amount it has credited to a retained earnings or other surplus account.

Special resolution additions to stated capital account

(5) Where a provincial corporation proposes to add any amount, other than an amount to be added under subsection 54(2), to a stated capital account that it maintains in respect of a class or series of shares, the addition to the stated capital account must be approved by special resolution if,

(a) the amount to be added,

(i) was not received by the provincial corporation as consideration for the issue of shares, or

(ii) was received by the provincial corporation as consideration for the issue of shares but does not form part of the stated capital attributable to such shares; and

(b) the provincial corporation has outstanding shares of more than one class or series.

Idem

(6) Where a class or series of shares of a provincial corporation would be affected by the addition of an amount to any stated capital account in a situation where a special resolution is required under subsection (5) in a manner different from the manner in whicn any other class or series of shares of the provincial corporation would be affected by such action, the holder of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not such shares otherwise carry the right to vote.

Special shares in series

44.-(1) Subject to its instrument of incorporation, the directors of a provincial corporation may authorize the issue of any class of shares other than common shares in one or more series and they may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series.

Proportionate abatement

(2) If any amount,

(a) of cumulative dividends, whether or not declared, or declared non-cumulative dividends; or

(b) payable on return of capital in the event of the liquidation, dissolution or winding up of a provincial corporation,

in respect of shares of a series is not paid in full, the shares of the series shall participate rateably with the shares of all other series of the same class in respect of,

(c) all accumulated cumulative dividends, whether or not declared, and all declared non-cumulative dividends; or

(d) all amounts payable on return of capital in the event of the liquidation, dissolution or winding up of the corporation,

as the case may be.

No priority of shares of same class

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer upon the shares of a series a priority in respect of,

(a) dividends; or

(b) return of capital in the event of the liquidation, dissolution or winding up of the corporation,

over the shares of any other series of the same class.

Conversion privileges

45.-(1) A provincial corporation may issue warrants as evidence of conversion privileges or options or rights to acquire its securities and it shall set out the conditions thereof,

(a) in certificates evidencing the securities to which the conversion privileges, options or rights are attached; or

(b) in separate certificates or other documents.

Idem

(2) Conversion privileges and options or rights to purchase securities of a provincial corporation may be made transferable or non-transferable, and options or rights to purchase may be made separable or inseparable from any securities to which they are attached.

Corporation to maintain sufficient reserve

(3) Where a provincial corporation has granted privileges to convert any securities, other than shares issued by it, into shares of the corporation or has issued or granted options or rights to acquire shares of the corporation and, where the

instrument of incorporation limits the number of authorized shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

Subsidiaries not to hold shares in holding body corporate

46. Except as provided in sections 47 to 49, a provincial corporation,

(a) shall not hold shares in itself or in its holding body corporate; and

(b) shall not permit any of its subsidiaries to hold shares in the corporation or in the holding body corporate of the corporation.

Purchase of issued shares

47.-(1) Subject to subsection (2) and to its by-laws, a provincial corporation may, on notice to the Superintendent, purchase or otherwise acquire shares issued by it to,

(a) settle or compromise a debt or claim asserted by or against the corporation;

(b) eliminate fractional shares; or

(c) fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a current or former director, officer or employee of the corporation.

Restriction on payment

(2) A provincial corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that,

(a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;

(b) after the payment, the realizable value of the corporation's assets would be less than the aggregate of,

(i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, prior to the holders of the shares to be purchased or acquired; or

(c) the effect of the purchase would be to cause the corporation to be in contravention of this Act or the regulations.

Redemption of shares

48.-(1) Subject to subsection (2) and to its by-laws and on notice to the Superintendent, a provincial corporation may purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price calculated according to a formula stated in the by-laws.

Restriction on redemption

(2) A provincial corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that,

(a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;

(b) after the payment, the realizable value of the corporation's assets would be less than the aggregate of,

(i) it liabilities, and

(ii) the amount that would be required to pay the holders of shares who have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed; or

(c) the effect of the redemption would be to cause the corporation to be in contravention of this Act or the regulations.

Donation of share

49. A provincial corporation may accept from any shareholder a share of the corporation surrendered to it as a gift.

Reduction of stated capital account

50.-(1) Subject to subsection (4) and its instrument of incorporation, a provincial corporation, by special resolution and with the approval of the Superintendent, may reduce its stated capital for any purpose.

Right to vote

(2) Where a class or series of shares of a provincial corporation would be affected by a reduction of stated capital under subsection (1) in a manner different from the manner in which any other class or series of shares of the corporation would be affected by such action, the holders of the differently affected class or series of shares are entitled to vote separately as a class or series, as the case may be, on the proposal to take the action, whether or not the shares otherwise carry the right to vote.

Account reduced to be specified

(3) A special resolution under this section shall specify the stated capital account or accounts from which the reduction of stated capital affected by the special resolution will be made.

Restriction on reduction

(4) A provincial corporation shall not take any action to reduce its stated capital for any purpose other than the purpose of declaring it to be reduced by an amount that is not represented by realizable assets if there are reasonable grounds for believing that,

(a) the corporation is or, after the taking of such action, would be unable to pay its liabilities as they become due;

(b) after the taking of such action, the realizable value of the corporation's assets would be less than the aggregate of its liabilities; or

(c) the effect of the reduction would be to cause the corporation to be in contravention of this Act or the regulations.

Application for order where improper reduction

(5) A shareholder, creditor or depositor of a provincial corporation is entitled to apply to the High Court of Justice for an order compelling a shareholder or other recipient to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other

recipient as a consequence of a reduction of capital made contrary to this section.

Class action

(6) Where it appears that there are numerous shareholders who may be liable under this section, the High Court of Justice may permit an action to be brought against one or more of them as representatives of the class and, if the plaintiff establishes a claim as creditor, may make an order of reference and add as parties in the referee's office all such shareholders as may be found, and the referee shall determine the amount that each should contribute towards the plaintiff's claim, which amount may not, in the case of any particular shareholder, exceed the amount referred to in subsection (5), and the referee may direct payment of the sums so determined.

Shareholder holding shares in fiduciary capacity

(7) No person holding shares in the capacity of a personal representative and registered on the records of the provincial corporation as a shareholder and therein described as the personal representative of a named person is personally liable under this section, but the person named is subject to all liabilities imposed by this section.

Liability not affected

(8) This section does not affect any liability that arises under section 105.

Reduction of stated capital account

51.-(1) Upon a purchase, redemption or other acquisition by a provincial corporation under section 47, 48 or 55 of shares or fractions thereof issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

Adjustment in stated capital account

(2) A provincial corporation shall adjust its stated capital account or accounts in accordance with any special resolution referred to in subsection 50(3).

Idem

(3) Upon a change in issued shares of a provincial corporation, or upon a conversion of such shares pursuant to their terms, into shares of another class or series, the corporation shall,

(a) deduct from the stated capital account maintained for the class or series of shares changed or converted an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, and dividing by the number of issued shares of that class or series immediately before the change or conversion; and

(b) add the result obtained under clause (a) and any additional consideration received pursuant to the change or conversion to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

Idem

(4) For the purpose of subsection (3), where a provincial corporation issues two classes or series of shares and there is attached to each class or series a right to convert a share of the one class or series into a share of the other class or series, the amount of stated capital attributable to a share in either class or series is the amount obtained when the sum of the stated capital of both classes or series of shares is divided by the number of issued shares of both classes or series of shares immediately before the conversion.

Status of shares purchased

(5) Shares of any class or series or fractional shares issued by a provincial corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the instrument of incorporation limits the number of authorized shares of the class or series, may be restored to the status of authorized but unissued shares of the class.

Conversion of shares

(6) Where shares of a class or series are changed or converted pursuant to their terms into the same or another number of shares of another class or series, such shares become the same in all respects as the shares of the class or series

respectively into which they are changed or converted.

Contract with corporation re purchase of its shares

52.-(1) A contract with a provincial corporation providing for the purchase by it of its own shares is specifically enforceable against it except to the extent that it can not perform the contract without thereby being in breach of section 47 or 48.

Idem

(2) In any action brought on a contract referred to in subsection (1), the provincial corporation has the burden of proving that performance thereof is prevented by section 47 or 48.

Idem

(3) Until the provincial corporation has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the corporation is lawfully able to do so or in a liquidation to be ranked subordinate to the rights of depositors, creditors and holders of subordinated notes but in priority to the other shareholders.

Commission on sale

53. The directors of a provincial corporation may authorize the corporation to pay a reasonable commission to any person in consideration of the person,

(a) purchasing or agreeing to purchase shares of the corporation from it or from any other person; or

(b) procuring or agreeing to procure purchasers for any such shares.

Declaration of dividends

54.-(1) The directors of a provincial corporation may declare and a provincial corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a provincial corporation may pay a dividend in money or property.

Share dividend

(2) If shares of a provincial corporation are issued in payment of a dividend, it shall add to

the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend the declared amount of the dividend stated as an amount of money.

When dividend not to be declared

(3) The directors shall not declare and a provincial corporation shall not pay a dividend if there are reasonable grounds for believing that,

(a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due;

(b) after the payment, the realizable value of the corporation's assets would thereby be less than the aggregate of,

(i) its liabilities, and

(ii) its stated capital of all classes; or

(c) the effect of the payment would be to cause the corporation to be in contravention of this Act or the regulations.

Lien on shares

55.-(1) The by-laws of a provincial corporation may provide that it has a lien on a share registered in the name of a shareholder or the shareholder's legal representative for a debt of that shareholder to the provincial corporation.

Where subs.(1) does not apply

(2) Subsection (1) does not apply to a provincial corporation that has shares listed on, or traded through the facilities of, a stock exchange recognized by the Ontario Securities Commission.

Enforcement of lien

(3) A provincial corporation may enforce a lien referred to in subsection (1) in accordance with its by-laws.

Restrictions on issue, transfer, etc.

56. A provincial corporation shall not impose restrictions on the issue, transfer or ownership of shares of any class or series except such restrictions as are authorized by its instrument of incorporation and this Act.

Investment securities

1982, c.4

57. Part VI of the Business Corporations Act, 1982 applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

Insiders, trading

58. Part X of the Business Corporations Act, 1982 applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

Interpretation

59.-(1) For the purposes of this section and sections 60 and 61, "non-resident" means,

(a) an individual who is not a resident Canadian;

(b) a body corporate incorporated, formed or otherwise organized elsewhere than in Canada;

(c) a body corporate that is controlled directly or indirectly by non-residents as defined in clause (a) or (b);

(d) a trust established by a non-resident as defined in clause (a), (b) or (c) or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest; or

(e) a body corporate that is controlled directly or indirectly by a trust mentioned in clause (d).

Associated shareholder

(2) For the purposes of this section and sections 60 and 61, a shareholder shall be deemed to be associated with another shareholder if,

(a) one shareholder is a body corporate of which the other shareholder is an officer or director;

(b) one shareholder is a partnership of which the other shareholder is a partner;

(c) one shareholder is a body corporate that is controlled directly or indirectly by the other shareholder;

(d) both shareholders are bodies corporate and one shareholder is controlled directly or indirectly by the same individual or body corporate that controls directly or indirectly the other shareholder;

(e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or

(f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

Shares held jointly

(3) For the purposes of this section and sections 60 and 61, where a voting share of a provincial corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident.

Deemed control

(4) For the purposes of this section and sections 60 and 61, a body corporate shall be deemed to be controlled by another person or body corporate or by two or more bodies corporate if voting securities of the first-mentioned body corporate carrying more than 10 per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or body corporate or by or for the benefit of the other bodies corporate.

Limit on shares held by non-resident

60.-(1) The directors of a provincial corporation shall refuse to allow in the securities register of the corporation the entry of a transfer of any voting shares of the corporation to a non-resident,

(a) if, when the total number of shares of the voting shares of the corporation held by non-residents exceeds 25 per cent of the total number of issued and outstanding voting shares, the entry of the transfer would increase the percentage of such shares held by non-residents;

(b) if, when the total number of voting shares of the corporation held by non-residents is 25 per cent or less of the total number of issued and outstanding voting shares, the entry of the transfer would cause the total number of such shares held by non-residents to exceed 25 per cent of the total number of issued and outstanding voting shares;

(c) if, when the total number of the voting shares of the corporation held by the non-resident and by other shareholders associated with the non-resident, if any, exceeds 10 per cent of the total number of issued and outstanding voting shares, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with the non-resident; or

(d) if, when the total number of voting shares of the corporation held by the non-resident and by other shareholders associated with the non-resident, if any, is 10 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares held by the non-resident and by other shareholders associated with the non-resident, if any, to exceed 10 per cent of the issued and outstanding voting shares.

Exception

(2) Notwithstanding subsection (1), the directors of a provincial corporation may allow in the securities register of the corporation the entry of a transfer of any voting shares of the corporation to a non-resident when it is shown to the directors on evidence satisfactory to them that the share was, immediately before the 17th day of June, 1970, held in the right of or for the use or benefit of the non-resident.

Allotment to non-resident

(3) The directors of a provincial corporation shall not allot, or allow the allotment of any voting shares of the corporation to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those

shares, the entry thereof in the securities register would be required, under subsection (1), to be refused by the directors.

Offence

(4) Default in complying with this section does not affect the validity of a transfer or allotment of voting shares of the provincial corporation that has been entered into the securities register of the corporation, but every director or officer who knowingly authorizes or permits such default is guilty of an offence.

Voting by non-residents

61.-(1) Non-residents shall not exercise the voting rights attached to shares of a provincial corporation unless entered in the securities register of the corporation as a shareholder in respect of the shares.

Voting rights of nominees suspended

(2) Where a person that is a resident Canadian or a body corporate that is resident in Canada holds voting shares of a provincial corporation in the right of, or for the use or benefit of, a non-resident and in respect of which the non-resident is not entered in the securities register of the corporation as the holder, the person shall not, either in person or by proxy or by a voting trust, exercise the voting rights pertaining to those shares.

Change of status while entered on books

(3) Where a person that is a resident Canadian or a body corporate that is resident in Canada becomes a non-resident while entered in the securities register of a provincial corporation as a shareholder and the number of voting shares of such person recorded in the securities register when added to those entered therein as owned by other non-residents exceed the limit set out in section 60, the person shall not exercise, directly, by proxy or by a voting trust, any voting rights in respect of its shares that exceed the limit set out in section 60.

Voting rights of single non-resident owner

(4) Notwithstanding subsections (1), (2) and (3), where any voting shares of a provincial corporation are held in the name of or for the use or benefit of a non-resident, other than shares in respect of which the non-resident was entered in the securities register of the corporation before the 17th day of June, 1970 or is entered in the securities register under subsection 60(2), no

person shall, either as proxy or by a voting trust or in person, exercise the voting rights pertaining to such shares held by the non-resident or in the non-resident's right or for the non-resident's use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of,

(a) any shareholders associated with the non-resident; or

(b) any persons who would, be deemed to be shareholders associated with the non-resident were such persons and the non-resident themselves shareholders,

exceed in number 10 per cent of the issued and outstanding voting shares of such shares.

Offence

(5) Every person who knowingly contravenes this section is guilty of an offence.

Effect of contravention

(6) No proceeding, matter or thing at a general meeting of a provincial corporation is void by reason only of a contravention of this section, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a resolution passed at a special general meeting of the corporation.

Interpretation

62. For the purposes of sections 63 and 64, a company, individual or trust that, by itself or with any company, individual or trust related to it, if any, that holds or controls 10 per cent or more of the total number of issued and outstanding shares of a class of voting shares of a corporation shall be deemed to be a holding body corporate.

Consent of Superintendent

63.-(1) No transfer or issue of voting shares of a provincial corporation shall be entered in its securities register until the consent of the Superintendent has been received by the corporation, if,

(a) when the total number of shares of a class of voting shares of the corporation held by a person and by

other shareholders related to the person, if any, exceeds 10 per cent of the total number of the issued and outstanding shares of that class, the transfer or issue would increase the percentage of shares of that class held by such person and by other shareholders related to the person, if any; or

(b) when the total number of shares of a class of voting shares of the provincial corporation held by a person and by other shareholders related to the person, if any, is 10 per cent or less of the total number of issued and outstanding shares of that class, the transfer or issue would cause the total number of shares of that class held by such person and by other shareholders related to the person, if any, to exceed 10 per cent of the issued and outstanding shares of that class,

and until the consent of the Superintendent is received by the corporation, no person shall, in person or by proxy, exercise the voting rights pertaining to any of the voting shares that are held by or in the name of the shareholder or by or in the name of any person related to the shareholder.

Application to Superintendent

(2) A person to whom shares are to be transferred or issued in circumstances that require the consent of the Superintendent may apply, in writing, for the consent and, for the purposes of the application, the person shall provide the Superintendent with such information as the Superintendent may request.

Refusal of consent

(3) On an application under subsection (2), the Superintendent may refuse consent where, in his or her opinion, it would be in the public interest to do so and, without limiting the generality of the foregoing, the Superintendent may refuse consent where the shareholder or any person related to the shareholder,

(a) is or has been bankrupt;

(b) has been convicted of a criminal offence, an offence under this Act or an

R.S.O.1980, c.466

offence under the Securities Act;

(c) is or has been subject to a cease trading order under the Securities Act;

(d) is subject to an examination under section 184 or an investigation under section 204;

(e) is contravening any provision of this Act or the regulations or of any comparable legislation of another jurisdiction or of any undertaking given to the Superintendent; or

(f) has failed to provide the information requested under subsection (2).

Effective date of consent

(4) The consent of the Superintendent under this section takes effect on the date set out in the consent and the effective date may be a date before the date the consent is given.

Declaration may be required

64. The Superintendent may, from time to time, in writing, direct a provincial corporation to obtain from any person in whose name a share of the corporation is held or beneficially owned a declaration containing information,

(a) concerning the ownership or beneficial ownership of such share;

(b) as to whether such share is held or beneficially owned by a person who is related to any other person and the name of that other person where applicable;

(c) concerning the ownership or beneficial ownership of the shares of a holding company; and

(d) concerning such other matters as are specified by the Superintendent,

and as soon as possible after the receipt of a direction from the Superintendent under this section, the directors of the corporation shall comply therewith and every person who is requested by the corporation to provide a declaration in the prescribed form containing information referred to

in this subsection shall forthwith comply with the request by submitting the completed declaration to the Superintendent.

Hearing

65.-(1) Where the Superintendent proposes to refuse consent under section 63, he or she shall forthwith advise the applicant and shall give the applicant an opportunity to be heard before him or her.

Power of L.G.in C.

(2) Upon the petition of the applicant, filed with the Clerk of the Executive Council within twenty-eight days after the date of the decision of the Superintendent under subsection (1), the Lieutenant Governor in Council may,

(a) confirm, vary or rescind the whole or any part of such decision; or

(b) require the Superintendent to hold a new public hearing of the whole or any part of the application to the Superintendent upon which such decision of the Superintendent was made,

and the decision of the Superintendent after the public hearing under clause (b) is not subject to petition under this section.

Decision final

(3) Except as provided in subsection (2), a decision of the Superintendent under this section is final and binding and no such decision or decision as confirmed or varied under subsection (2) shall be stayed, varied or set aside by any court.

Exemption

66. The Superintendent, with the approval of the Lieutenant Governor in Council, may by order exempt any corporation or other person from the application of sections 63 to 65, in whole or in part, on such terms and conditions as are set out in the order and where any such order is filed with the corporation named in the order, it shall be deemed to be a consent of the Superintendent for the purpose of section 63, so long as the terms and conditions of the order have been complied with.

Transfer valid only after entry

67.-(1) No transfer of shares of a provincial corporation, unless made by a sale under execution or under the order or judgment of a court of competent jurisdiction, is valid for any purpose until the transfer has been entered in the securities register of the corporation.

Exceptions

(2) Notwithstanding subsection (1), a transfer of shares that has not been entered in the securities register of a provincial corporation is valid for the purpose of showing the rights as between the parties to the transfer.

By-laws

68.-(1) The directors of a provincial corporation may make by-laws,

(a) requiring any person holding any voting share of the corporation to submit written declarations,

(i) with respect to the ownership of a share of the corporation or of the holding body corporate,

(ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,

(iii) as to whether the shareholder is associated with or related to any other shareholder, and

(iv) with respect to such other matters as the directors consider relevant for the purposes of sections 60 to 67;

(b) prescribing the times at which and the manner in which any declarations required under clause (a) are to be submitted; and

(c) requiring any person desiring to have a transfer of a share to the person entered in the securities register of the corporation to submit such a declaration as may be required under this section in the case of a shareholder.

Where declaration pending

(2) Where by or under any by-law made under subsection (1), any declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may prohibit the entry of the transfer in the securities register of the corporation until the required declaration has been submitted.

Liability of directors

69. In determining, for the purposes of whether a person is a resident Canadian, body corporate resident in Canada or a non-resident, by whom a body corporate is controlled or any other circumstances relevant to the performance of their duties under sections 60 to 67, the directors of the provincial corporation and any other person acting as proxy for a shareholder of the provincial corporation may rely upon any statement made in any declarations made pursuant to a by-law made under subsection 68(1) or rely upon their own knowledge of the circumstances, and the directors and any such person are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge.

Shareholders liability limited

70. Except as otherwise provided in this Act, the shareholders of a provincial corporation are not, as shareholders, liable for any act, default, obligation or liability of the corporation.

Place of meetings

71. Subject to the by-laws, a meeting of shareholders of a provincial corporation shall be held at such place in Canada as the directors determine or, in the absence of such a determination, at its principal place of business.

Shareholders meeting

72. The directors of a provincial corporation,

(a) shall call an annual meeting of shareholders not later than three months after the corporation comes into existence and subsequently not later than fifteen months after holding the last preceding annual meeting; and

(b) may call a special meeting of shareholders at any time.

Record date

73.-(1) For the purpose of determining shareholders,

(a) entitled to receive payment of a dividend;

(b) entitled to participate in a liquidation or distribution; or

(c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days the particular action to be taken.

Idem

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for such determination of shareholders, but the record date shall not precede by more than fifty days or by less than twenty-one days the date on which the meeting is to be held.

Where no date fixed

(3) Where no record date is fixed,

(a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be,

(i) at the close of business on the day immediately preceding the day on which the notice is given, or

(ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution therefor.

Notice of date

(4) If a record date is fixed, unless notice of the record date is waived in writing by every holder of a share of the class or series affected

whose name is set out in the securities register of the corporation at the close of business on the day the directors fix the record date, notice thereof shall be given, not less than seven days before the date so fixed,

(a) by advertisement in a newspaper published or distributed in the place where the provincial corporation has its principal place of business and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded; and

(b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

Notice

74.-(1) Notice of the time and place of a meeting of shareholders shall be sent, in the case of an offering provincial corporation, not less than twenty-one days and, in the case of any other provincial corporation, not less than ten days, but, in either case, not more than fifty days before the meeting to each shareholder entitled to vote at the meeting, to each director and to the auditor.

Idem

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the securities register of the provincial corporation on the date determined under subsection 73(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

Adjournment

(3) If a meeting of shareholders is adjourned for less than thirty days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting other than by announcement at the earliest meeting that is adjourned.

Idem

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than ninety days, section 111 of the Business Corporations Act, 1982, as

1982,c.4

incorporated into this Act under section 86, does not apply.

Special business

(5) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the minutes of an earlier meeting, the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor, shall be deemed to be special business.

Idem

(6) Notice of a meeting of shareholders at which special business is to be transacted shall state or be accompanied by a statement of,

(a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

(b) the text of any special resolution or by-law to be submitted to the meeting.

Shareholders meeting

75. Subject to this Act and the by-laws of a provincial corporation,

(a) all questions proposed for the consideration of the shareholders shall be determined by the majority of the votes cast and the chairman presiding at the meeting shall not have a second or casting vote in case of an equality of votes;

(b) the chairman presiding at a meeting of shareholders may, with the consent of the meeting and subject to subsections 74(3) and (4) and to such conditions as the meeting decides, adjourn the meeting from time to time and from place to place; and

(c) the president or, in the president's absence, a vice-president who is a director shall preside as chairman at a meeting of shareholders, but, if there is no president or such a vice-president or if at a meeting none of them is present within fifteen minutes after the

time appointed for the holding of the meeting, the shareholders present shall choose a person from their number to be the chairman.

Waiving notice

76. A shareholder and any other person entitled to attend a meeting of shareholders of a provincial corporation may in any manner and at any time waive notice of a meeting of shareholders, and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where the shareholder attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Proposal

77.-(1) A shareholder of a provincial corporation entitled to vote at a meeting of shareholders may,

(a) submit to the corporation notice of a proposal; and

(b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

Circulating proposal

1982,c.4

(2) Where a provincial corporation receives notice of a proposal and the corporation solicits proxies, it shall set out the proposal in the management information circular required by section 112 of the Business Corporations Act, 1982, as incorporated into this Act under section 86, or it shall attach the proposal to the information circular.

Statement in support of proposal

(3) If so requested by a shareholder giving notice of a proposal, the provincial corporation shall include in the management information circular or attach thereto a statement by the shareholder of not more than two hundred words in support of the proposal along with the name and address of the shareholder.

Proposal may include nominations

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than 5 per cent of the shares or 5 per cent of the shares of a class or series of

shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations being made at a meeting of shareholders.

Where subss. (2,3) do not apply

(5) A provincial corporation is not required to comply with subsections (2) and (3) where,

(a) the proposal is not submitted to the corporation at least sixty days before the anniversary date of the last annual meeting, if the matter is proposed to be raised at an annual meeting, or at least sixty days before a meeting other than the annual meeting, if the matter is proposed to be raised at a meeting other than the annual meeting;

(b) it clearly appears that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation or any of its directors, officers or security holders, or for a purpose that is not related in any significant way to the business or affairs of the corporation;

(c) the corporation, at the shareholder's request, included a proposal in a management information circular relating to a meeting of shareholders held within two years preceding the receipt of the request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting; or

(d) substantially the same proposal was submitted to shareholders in a management information circular or a dissident's information circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated.

Where no liability

(6) No provincial corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

Where refusal to circulate proposal

(7) Where a provincial corporation refuses to include a proposal in a management information circular, it shall, within ten days after receiving the proposal, send notice to the shareholder submitting the proposal of its intention to omit the proposal from the management information circular and send to the shareholder a statement of reasons for the refusal.

Application to Court

(8) Upon the application of a shareholder aggrieved by a provincial corporation's refusal under subsection (7), the High Court of Justice may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

Idem

(9) The provincial corporation or any person aggrieved by a proposal may apply to the High Court of Justice for an order permitting the provincial corporation to omit the proposal from the management information circular, and the court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

Notice to Superintendent

(10) An applicant under subsection (8) or (9) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

Interpretation

(11) In this section, "proposal" means a matter that a shareholder entitled to vote proposes to raise at a meeting of shareholders.

Lists of shareholders

78.-(1) A provincial corporation shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder, which list shall be prepared,

(a) if a record date is fixed under subsection 73(2), not later than ten days after such record date; or

(b) if no record date is fixed,

(i) at the close of business on the day immediately preceding the day on which notice is given, or

(ii) where no notice is given, on the day on which the meeting is held.

Entitlement to vote

(2) Where a provincial corporation fixes a record date under subsection 73(2), a person named in the list prepared under clause (1)(a), subject to sections 59 to 67, is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that,

(a) the person has transferred any of the shares after the record date; and

(b) the transferee of those shares,

(i) produces properly endorsed share certificates, or

(ii) otherwise establishes ownership of the shares,

and demands, not later than ten days before the meeting, or such shorter period before the meeting as the by-laws of the corporation may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

Idem

(3) Where a provincial corporation does not fix a record date under subsection 73(2), a person named in a list prepared under clause (1)(b) is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that,

(a) the person has transferred any of the shares after the date on which the list prepared under clause (1)(b) was prepared; and

(b) the transferee of those shares,

(i) produces properly endorsed share certificates, or

(ii) otherwise establishes ownership of the shares,

and demands, not later than ten days before the meeting, or such shorter period before the meeting as the by-laws of the corporation may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

Examination of list

(4) A shareholder of a provincial corporation may examine the list of shareholders,

(a) during usual business hours at the principal place of business of the corporation or at the place where its securities register is maintained; and

(b) at the meeting of shareholders for which the list was prepared.

Quorum

79.-(1) Unless the by-laws otherwise provide, the holders of a majority of the shares entitled to vote at a meeting of shareholders, whether present in person or represented by proxy, constitute a quorum.

Idem

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting.

Idem

(3) If a quorum is not present at the time appointed for a meeting of shareholders, or within such reasonable time thereafter as the shareholders present may determine, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

Voting rights

80.-(1) Each common share of a provincial corporation entitles the holder thereof to one vote at all meetings of shareholders.

Idem

(2) Unless the instrument of incorporation otherwise provides, shares of a provincial corporation that are not common shares entitle the holder thereof to one vote at all meetings of shareholders.

Representative

(3) Where a body corporate or association is a shareholder of a provincial corporation, the provincial corporation shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the provincial corporation.

Idem

(4) An individual authorized as set out in subsection (3) may exercise on behalf of the body corporate or association he or she represents all the powers it could exercise if it were an individual shareholder.

Joint shareholders

(5) Unless the by-laws otherwise provide, where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons are present, in person or by proxy, they shall vote as one on the shares jointly held by them.

Method of voting

81.-(1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

Idem

(2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands.

Entry in minutes

(3) Unless a ballot is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairman declared a motion to be carried is admissible in evidence as <u>prima facie</u> proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion.

Effect of signed resolutions

82.-(1) Except where a written statement is submitted by a director under subsection 96(2) or where representations in writing are submitted by an auditor under subsection 112(6),

(a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders, is as valid as if it had

been passed at a meeting of the shareholders; and

(b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to that meeting of shareholders.

Copy of resolution kept with minutes

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meeting of shareholders.

Requisition for shareholders meeting

83.-(1) On notice to the Superintendent, the holders of not less than 5 per cent of the issued shares of a provincial corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Idem

(2) The requisition referred to in subsection (1) shall state the business to be transacted at the meeting and shall be sent to the principal place of business of the corporation.

Duty of directors to call meeting

(3) Upon receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless,

(a) a record date has been fixed under subsection 73(2) and notice thereof has been given under subsection 73(4);

(b) the directors have called a meeting of shareholders and have given notice thereof under section 74; or

(c) the business of the meeting as stated in the requisition includes matters described in clauses 77(5)(b), (c) and (d).

Where requisitioner may call meeting

(4) Subject to subsection (3), if the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call a meeting.

Calling of meeting

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called under the by-laws and this Part.

Repayment of expenses

(6) The provincial corporation shall reimburse the shareholders for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting unless the shareholders have not acted in good faith and in the interest of the shareholders of the corporation generally.

Requisition to Court

84.-(1) If for any reason it is impracticable to call a meeting of shareholders of a provincial corporation in the manner in which meetings of those shareholders may be called or to conduct the meeting in the manner prescribed by the by-laws and this Act, or if for any other reason the High Court of Justice thinks fit, the court, upon the application of a director or a shareholder entitled to vote at the meeting, may order a meeting to be called, held and conducted in such manner as the court directs and upon such terms as to security for the costs of holding the meeting or otherwise as the court considers appropriate.

Idem

(2) Without restricting the generality of subsection (1), the court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted under this section.

Effect of meeting

(3) A meeting called, held and conducted under this section is for all purposes a meeting of shareholders of the provincial corporation duly called, held and conducted.

Notice to Superintendent

(4) A director or shareholder who makes application to the court under subsection (1) shall give notice to the Superintendent.

Application to court re directors and auditors

85.-(1) A shareholder or director of a provincial corporation or the corporation, may apply to the High Court of Justice to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

Notice to Superintendent

(2) A shareholder, director or corporation applying under subsection (1) shall give notice to the Superintendent.

Notice of orders

(3) Upon an application under this section, the court may make any order it considers appropriate including, without limiting the generality of the foregoing,

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made; and

(d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Proxies

1982,c.4

86. Part VIII of the Business Corporations Act, 1982 applies with necessary modifications with respect to every provincial corporation as if it were a corporation incorporated under that Act.

PART VI

DIRECTORS AND OFFICERS

Duties

87. The directors shall manage or supervise the management of the business and affairs of a provincial corporation.

Resolutions

88.-(1) The concurrence of a majority of the directors present at a meeting of the directors is necessary to pass any resolution.

By-law by resolution

(2) Unless the instrument of incorporation, this Act or the by-laws otherwise provide, the directors, by resolution, may make, amend or repeal any by-laws that regulate the business or affairs of a provincial corporation.

Confirmation by shareholders

(3) Where a by-law is made, amended or repealed under subsection (2), the directors shall submit the by-law, amendment or repeal to the shareholders at the next meeting of shareholders, and the shareholders may confirm, reject or amend the by-law, amendment or repeal.

Effective date

(4) Where a by-law is made, amended or repealed under subsection (2), the by-law, amendment or repeal is effective from the date of the resolution of the directors until it is confirmed, confirmed as amended or rejected by the shareholders under subsection (3) or until it ceases to be effective under subsection (5) and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

Rejection, etc.

(5) If a by-law or an amendment or repeal of a by-law is rejected by the shareholders, or if the directors do not submit the by-law, amendment or repeal to the shareholders as required under subsection (3), the by-law, amendment or repeal ceases to be effective on the date of such rejection or on the date of the meeting of shareholders at which it should have been submitted, as the case may be, and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is

confirmed or confirmed as amended by the shareholders.

By-law re shareholder proposal

(6) If a shareholder proposal to make, amend or repeal a by-law is made in accordance with section 77 and is adopted by shareholders at a meeting, the by-law, amendment or repeal is effective from the date of its adoption and requires no further confirmation.

By-law need not be so described

(7) A by-law need not be described as a by-law in a resolution referred to in this section.

Board of directors

89.-(1) The term of office of a director of a provincial corporation shall not exceed the period between annual meetings of the shareholders.

Idem

(2) A provincial corporation shall have at least five directors.

Outside directors

(3) At least one third of the directors of a provincial corporation shall be outside directors.

Idem

(4) For the purposes of this Part, an individual is qualified to be an outside director if,

(a) the individual does not hold more than 10 per cent of the voting shares of the corporation or of any of its affiliates;

(b) the individual is not an officer or employee of the corporation or any of its affiliates and has not been an officer or employee of the corporation or any of its affiliates within two years of the date of his or her becoming a director;

(c) the individual is not a spouse or child of an individual described in clause (a) or (b); and

(d) the individual is not a relative of an individual described in clause (a) or (b) or a relative of a spouse of an individual described in clause (a) or (b) or if the individual is such a relative, he or she does not have the same home as an individual described in clause (a) or (b) or as a spouse of an individual described in clause (a) or (b).

Citizenship

(5) The majority of directors of a provincial corporation shall be resident Canadians.

Director disqualification

90. The following persons are disqualified from being a director of a provincial corporation:

1. A person who is not an individual.
2. An individual who is less than eighteen years of age.
3. An individual who is of unsound mind and who has been so found by a court in Canada or elsewhere.
4. An individual who has the status of bankrupt.
5. An individual who is the director of a corporation not affiliated with the corporation of which the individual wishes to become a director.
6. An individual who is a director of a body corporate that is not affiliated with the loan or trust corporation when other directors of the body corporate constitute one-fifth or more of the board of directors of the loan or trust corporation.

Holding shares

91. Unless the instrument of incorporation or the by-laws otherwise provide, a director of a provincial corporation is not required to hold shares issued by the corporation.

First directors

92.-(1) Each first director named in the instrument of incorporation of a provincial corporation shall hold office from the date of issue of the letters patent until the first meeting of shareholders.

Election

(2) The shareholders of a provincial corporation shall elect, at the first meeting of shareholders and at each succeeding annual meeting, directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

Term of a director

(3) A director ceases to hold office at the close of the first annual meeting of shareholders following the director's election.

Idem

(4) Notwithstanding the provisions of this section, if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

Failure to elect

(5) If a meeting of shareholders fails to elect the number of directors required by the by-laws or by subsection 89(2) by reason of the disqualification, incapacity or death of one or more candidates, the directors elected at that meeting, if they constitute a quorum, may exercise all the powers of the directors of the provincial corporation pending the holding of a meeting of shareholders in accordance with subsection 97(2).

Notice to Superintendent

(6) Upon the election of a director, notice of such election shall be given to the Superintendent in the prescribed form.

Cumulative voting

93. Where the by-laws provide for cumulative voting,

(a) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected, and may cast all such votes in favour of one candidate or distribute them among the candidates in any manner;

(b) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;

(c) if a shareholder has voted for more than one candidate without specifying the distribution of votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates;

(d) if the number of candidates nominated for director exceed the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

(e) a director may not be removed from office if the votes cast against removal would be sufficient for election as a director and such votes could be voted cumulatively at an election at which the same total number of directors required by the by-laws were then being elected; and

(f) the number of directors required by the by-laws may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and such votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the by-laws were then being elected.

When director ceases to hold office

94.-(1) A director of a provincial corporation ceases to hold office upon,

(a) death or resignation;

(b) removal under section 95; or

(c) becoming disqualified under section 90.

Resignation

(2) A resignation of a director becomes effective at the time a written resignation is received by the provincial corporation or at the time specified in the resignation, whichever is later.

Notice to Superintendent

(3) Upon receipt of the resignation of a director, the provincial corporation shall deliver notice to the Superintendent of the resignation together with a copy of any statement made under subsection 96(2) or (3).

Removal of directors

95.-(1) Subject to clause 93(e), the shareholders of a provincial corporation may by resolution at an annual or special meeting remove any director from office.

Idem

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by resolution at a meeting of the shareholders of that class or series.

Idem

(3) Subject to clauses 93(a) to (d), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 97.

Notice to director

96.-(1) A director of a provincial corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

Reasons for resignation

(2) A director of a provincial corporation who,

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him or her from office; or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the resignation or removal of the director or because the director's term of office has expired or is about to expire,

may submit to the corporation a written statement giving the reasons for the resignation or the reasons, if any, why he or she opposes any proposed action or resolution, as the case may be.

Idem

(3) Where a director of a provincial corporation resigns because he or she disagrees with an action or omission of the board of directors or of the management of the corporation and,

(a) the director knows or believes that as a result of the action or omission the corporation or any shareholder, director, officer or employee of the corporation is or will be in contravention of this Act, the Securities Act or the Criminal Code (Canada) or legislation of another jurisdiction that is comparable to this Act or the Securities Act; or

R.S.O.1980, c.466

R.S.C.1970, c.C-34

(b) the director knows or believes that as a result of the action or omission there has been or will be a change in the circumstances of the corporation that might materially and adversely affect the financial position of the corporation,

the director shall submit to the corporation a written statement giving the reasons for the resignation.

Distribution of statement

(4) Upon receiving a statement under subsection (2), the corporation shall forthwith send a copy of the statement to every shareholder entitled to receive notice of meetings of shareholders unless the statement is included in or attached to a management information circular.

No liability

(5) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (4).

Idem

(6) A person who in good faith makes a statement under subsection (3) shall not be liable in any civil action arising out of the statement.

Notice to Superintendent

(7) A director who resigns as director of a provincial corporation shall forthwith give notice to the Superintendent of the resignation and a copy of any written statement given under this section.

Vacancies

97.-(1) Subject to subsections (3) and (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from,

(a) an increase in the number of directors; or

(b) a failure to elect the number of directors required to be elected at any meeting of shareholders.

Election to make quorum

(2) If there is not a quorum of directors, or if there has been a failure to elect the number of directors required by the by-laws or by subsection 89(2), the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

Election by class of shareholders

(3) Where the holders of any class or series of shares of a provincial corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number of directors for that class or series or from a failure to elect the number of directors for that class or series; or

(b) if there are no such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

No quorum

(4) The by-laws may provide that a vacancy among the directors shall only be filled by a vote of the shareholders, or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series.

Term

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor.

Change in number of directors

98. A provincial corporation may by special resolution increase or decrease the number of its directors but no decrease in the number of directors shall shorten the term of an incumbent director or reduce the number of directors to fewer than five.

Idem

99.-(1) Where the by-laws of a provincial corporation so provide, a meeting of its board of directors may be held at any place within Canada and otherwise shall be held at its principal place of business.

Minimum number of meetings

(2) The board of directors shall meet at least six times in each year.

Quorum

(3) Subject to the by-laws and subsection (4), a majority of the number of directors required by the by-laws constitutes a quorum at any meeting of directors, but in no case shall a quorum be less than two-fifths of the number of directors, of which one must be an outside director.

Idem

(4) Subject to the instrument of incorporation or by-laws, where there is a vacancy or vacancies in the board of directors, the remaining directors may exercise all the powers of the board so long as a quorum of the board remains in office.

Calling meeting of directors

(5) In addition to any other provision in the by-laws of a provincial corporation for calling meetings of directors, a quorum of the directors may, at any time, call a meeting of the directors for the transaction of any business the general nature of which is specified in the notice calling the meeting.

Notice

(6) Subject to the by-laws of the provincial corporation, notice of the time and place for the holding of the meeting called under subsection (5) shall be given to each director of the corporation by sending the notice ten days or more before the date of the meeting to the last address of the director as shown on the records of the corporation.

Waiver of notice

(7) A director may in any manner and at any time waive a notice of a meeting of directors and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned meeting

(8) Notice of an adjourned meeting of directors is not required to be given if the time and place

of the adjourned meeting is announced at the original meeting.

Meeting by telephone, etc.

(9) Unless the by-laws otherwise provide, if all the directors of a corporation present at or participating in the meeting consent, a meeting of directors or of a committee of directors may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting.

Place of meeting by telephone

(10) If a majority of the directors participating in a meeting held under subsection (9) is then in Canada, the meeting shall be deemed to have been held in Canada.

Executive committee

100.-(1) The shareholders of a provincial corporation, by special resolution and subject to subsection (2), may authorize the directors to delegate any of their powers to an executive committee consisting of not fewer than three to be appointed by the directors from their number and at least one member of the executive committee shall be an outside director.

Limitations on authority

(2) No executive committee has authority to,

(a) submit to the shareholders any question or matter requiring the approval of the shareholders;

(b) fill a vacancy among the directors or in the office of auditor or appoint or remove the chief operating officer, however designated, the chief executive officer, however designated, the chief financial officer, however designated, the chairman of the board or the president of the corporation;

(c) issue securities except in the manner and on the terms authorized by the directors;

(d) declare dividends;

(e) purchase, redeem or otherwise acquire shares issued by the corporation;

(f) pay a commission referred to in section 53;

(g) approve a management information circular;

(h) approve a take-over bid circular, directors' circular, or issuer bid circular or any amendment to any such circular referred to in Part XIX of the Securities Act;

R.S.O.1980, c.466

(i) approve any financial statements under subsection 119(1);

(j) adopt, amend or repeal by-laws;

(k) approve any item requiring approval of the board of directors under Part IX; or

(l) approve prudent lending standards under section 152.

Further limitation

(3) No business shall be transacted by an executive committee unless at least one outside director is present at the meeting.

Chairman

101.-(1) The directors of a provincial corporation shall from time to time elect from among themselves a person, other than the chief executive officer, however designated, of the corporation, to be the chairman of the board.

Other officers

(2) The directors may appoint officers and specify their duties.

Qualifications

(3) Where the regulations prescribe qualifications for appointment as an officer, the directors shall not appoint a person who does not have those qualifications.

Audit and investment committees

102.-(1) The directors of a provincial corporation shall appoint from their number an audit committee and an investment committee which committees shall fulfil such duties as are required under this Act and the regulations.

Idem

(2) Each committee appointed under subsection (1) shall consist of at least three members and a majority of the members shall be outside directors.

Acts not invalid

103. An act done by the board of directors or by an officer is not invalid by reason only of any defect that is thereafter discovered in the appointment, election or qualification of any of the directors or of the officer.

Resolutions

104.-(1) A resolution, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors, is as valid as if it had been passed at a meeting of directors or a committee of directors.

Idem

(2) A copy of every resolution passed under subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Liability

105.-(1) Directors of a provincial corporation who vote for or consent to a resolution authorizing the issue of a share for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

Idem

(2) Directors of a provincial corporation who vote for or consent to a resolution authorizing,

(a) any investment or transaction contrary to Part IX;

(b) a purchase, redemption or other acquisition of shares contrary to section 47 or 48;

(c) a reduction in the stated capital of the corporation contrary to section 50;

(d) a commission contrary to section 53;

(e) a payment of a dividend contrary to section 54;

(f) a payment of an indemnity contrary to section 109; or

(g) a payment to a shareholder contrary to an order under section 209,

are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by it.

Joint liability

(3) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.

Application to Court

(4) A director liable under this section is entitled to apply to the High Court of Justice for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to Part IX, section 47, 48, 50, 53, 54 or 109 or an order made under section 209.

Idem

(5) In connection with an application under subsection (4), the court may, if it is satisfied that it is equitable to do so,

(a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to Part IX or section 47, 48, 50, 53, 54 or 109 or an order made under section 209;

(b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or

(c) make any further order it thinks fit.

Liability for wages

106.-(1) The directors of a provincial corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages that become payable while they are directors for services performed for the provincial corporation and for the vacation pay accrued while they are directors for not more than twelve months under the Employment Standards Act, R.S.O.1980, c.137, and the regulations thereunder or under any collective agreement made by the provincial corporation.

Limitation

(2) A director is liable under subsection (1) only if,

(a) the director is sued while a director or within six months after ceasing to be a director; and

(b) the action against the director is commenced within six months after the debt became payable, and

(i) the corporation is sued in the action against the director and execution against the corporation is returned unsatisfied in whole or in part, or

(ii) before or after the action is commenced the corporation is deemed insolvent and is ordered to be wound up under the Winding Up Act (Canada) or is unable to pay its debts and is ordered to be wound up under the Winding Up Act (Canada) and the claim for debts are proved.

R.S.C.1970, c.W-10

Idem

(3) Where execution referred to in clause (2)(b) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Rights of director who pays debt

(4) Where a director pays a debt under subsection (1), the director is entitled to any preference that the employee would have been entitled to under the Winding Up Act (Canada), and, where a judgment has been obtained, the director is entitled to an assignment of the judgment.

Contribution

(5) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Deemed director

107.-(1) For the purpose of this section, a director or officer includes a person acting in a capacity similar to, or performing functions of, a director or officer.

Standard of care

(2) Every director and officer of a provincial corporation in exercising his or her powers and in discharging his or her duties shall,

(a) act honestly and in good faith with a view to the best interests of the corporation as a whole; and

(b) exercise the care, diligence and skill of a reasonably prudent director or officer under comparable circumstances.

Idem

(3) In considering whether a particular transaction or course of action is in the best interests of the provincial corporation as a whole, a director or officer shall have due regard to the interests of the depositors, as well as the shareholders of the corporation and, in the case of a trust corporation, shall also have due regard to the interests of the persons for whom it acts in a fiduciary capacity.

Duty to comply with Act

(4) Every director and officer of a provincial corporation shall comply with this Act and the regulations and the corporation's instrument of incorporation and by-laws.

Cannot contract out of liability

(5) No provision in a contract, the instrument of incorporation or the by-laws or a resolution relieves a director or officer of a provincial corporation from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach thereof.

Consent of director at meeting

108.-(1) A director who is present at a meeting of directors or committee of directors shall be deemed to have consented to any resolution passed or action taken thereat unless,

(a) the director's dissent is entered in the minutes of the meeting;

(b) the director requests that a dissent be entered in the minutes of the meeting;

(c) the director sends a written dissent to the secretary of the meeting before the meeting is terminated; or

(d) the director sends a dissent by registered mail or delivers it to the principal place of business of the corporation immediately after the meeting is terminated.

Idem

(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Idem

(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto unless within seven days after becoming aware of the resolution the director sends a dissent by registered mail or delivers it to the principal place of business of the corporation and requests that the dissent be entered in the minutes of the next meeting.

Indemnification

109.-(1) A provincial corporation may indemnify a person who is a director or officer of the corporation or a former director or officer of the corporation or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and the person's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by or on behalf of the person in respect of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of such corporation or body corporate if,

(a) the person acted honestly and in good faith with a view to the best interests of the corporation as a whole; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that the conduct was lawful.

Idem

(2) A corporation may, with the approval of the High Court of Justice, indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which the person is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by or on behalf of the person in connection with such action if the person

fulfils the conditions set out in clauses (1)(a) and (b).

Idem

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity,

(a) was substantially successful on the merits in the defence of the action or proceeding; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

Liability insurance

(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by the person in the person's capacity as a director or officer of the corporation, except where the liability relates to a failure to act honestly and in good faith with a view to the best interests of the corporation as a whole.

Application to Court

(5) A corporation or a person referred to in subsection (1) may on notice to the Superintendent apply to the High court of Justice for an order approving an indemnity under this section and the court may so order and make any further order it thinks fit.

Idem

(6) Upon an application under subsection (5), the court may order that notice be given to any interested person and such person is entitled to appear and be heard in person or by counsel.

Remuneration of directors

110.-(1) The shareholders of a provincial corporation shall fix the remuneration of the directors.

Remuneration of officers

(2) The directors of a provincial corporation may fix the remuneration of the officers and employees of the corporation.

Attendance records

111.-(1) Each provincial corporation shall keep a record of the total number of meetings of the directors and of the audit and investment committees and the number of such meetings attended by each director.

Idem

(2) A summary of the record kept under subsection (1) shall be sent to each shareholder and to the Superintendent with the notice of the annual meeting and shall be available on request to any depositor of the corporation.

PART VII

AUDITORS AND FINANCIAL STATEMENTS

Auditors

112.-(1) The shareholders of a provincial corporation at their first annual or special meeting shall appoint an auditor to hold office until the close of the first or next annual meeting, as the case may be, and, if the shareholders fail to do so, the directors shall forthwith make such appointment.

Idem

(2) The shareholders of every provincial corporation shall at each annual meeting appoint an auditor to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in office until a successor is appointed.

Casual vacancy

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act.

Removal of auditor

(4) Except where the auditor has been appointed by order of the Superintendent under subsection (8), the shareholders of a provincial corporation, by resolution passed by a majority of the votes cast at a special meeting duly called for the purpose, may remove an auditor before the expiration of the auditor's term of office, and shall, by a majority of the votes cast at that meeting, appoint another auditor for the remainder of the removed auditor's term.

Notice

(5) Before calling a special meeting for the purpose specified in subsection (4) or an annual or special meeting where the board is not recommending the reappointment of the incumbent auditor, the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

Right to make representations

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning,

(a) his or her proposed removal as auditor;

(b) the appointment or election of another person to fill the office of auditor; or

(c) his or her resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.

Remuneration

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment by Court

(8) If a provincial corporation does not have an auditor, the High Court of Justice may, upon the application of a director, a shareholder or the Superintendent, appoint and fix the remuneration of an auditor to hold office until an auditor is appointed by the shareholders.

Notice of appointment

(9) A provincial corporation, forthwith after the appointment of a person as auditor, shall give written notice of the appointment to the person and to the Superintendent.

Notice of vacancy

(10) Where a provincial corporation has a vacancy in the office of auditor, it shall give notice of the vacancy forthwith to the Superintendent.

Right to attend shareholder meetings

113.-(1) The auditor of a provincial corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, may attend and be heard thereat on matters relating to his or her duties as auditor.

Attend upon request

(2) If any director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice, at least five days before a meeting of shareholders, to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting, at the expense of the corporation, and answer questions relating to his or her duties as auditor.

Idem

(3) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation.

Replacement auditor

(4) No person shall accept appointment or consent to be appointed as auditor of a provincial corporation if the person is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he or she is to be replaced.

Idem

(5) Notwithstanding subsection (4), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within fifteen days after making the request referred to in that subsection, the person does not receive a reply.

Idem

(6) A person receiving a statement under subsection (4) shall promptly deliver a copy of the statement to the Superintendent and if no statement is received from the auditor being replaced within fifteen days after the request referred to in subsection (4), the person requesting the statement shall promptly give notice to the Superintendent of this fact.

Idem

(7) Any interested person may apply to the High Court of Justice for an order declaring the office of auditor of a provincial corporation to be vacant if the auditor has not complied with subsection (4), unless subsection (5) applies with respect to the appointment of the auditor.

No liability

(8) An auditor or former auditor who in good faith makes an oral or written statement or report under this Act shall not be liable in any civil action arising therefrom.

Panel of auditors

114.-(1) The Trust Companies Association of Canada may establish and maintain a panel of accountants eligible to be the auditors of corporations and, if a panel is so established and maintained, no person is eligible to be an auditor of a provincial corporation if the person is not or ceases to be on the panel.

Criteria

(2) No person shall be entered as a member of the panel established under subsection (1) unless the person has, in the opinion of the Trust Companies Association of Canada, the experience, competence and integrity to be an auditor of a corporation.

Removal

(3) The Trust Companies Association of Canada, after giving a person an opportunity to be heard, may remove the person from the panel established under subsection (1) if the person has demonstrated that he or she no longer has the experience, competence and integrity to be an auditor of a corporation.

Resignation

(4) A person who is removed from the panel under subsection (3) shall forthwith resign as auditor of every provincial corporation of which he or she is auditor and, where the person fails to resign, any interested person, including a depositor, may apply to the High Court of Justice for an order to declare vacant the auditor's office.

Disqualification

115.-(1) A person is disqualified from being an auditor of a provincial corporation if the person is not an accountant and if the person is not independent of,

(a) the corporation and its affiliates; and

(b) the directors and officers of the corporation and its affiliates.

Idem

(2) For the purposes of this section,

(a) independence is a question of fact; and

(b) a person shall be deemed not to be independent if the person or the person's business partner, spouse or child,

(i) is a business partner, director, officer or employee of the corporation or any of its affiliates,

(ii) is a business partner of any director, officer or employee of the corporation or any of its affiliates,

(iii) beneficially owns directly or indirectly or exercises control or direction over 10 per cent or more of the voting shares of the corporation or any of its affiliates, or

(iv) has been an agent of the Superintendent or has been a receiver, a receiver and manager, a liquidator or a trustee in bankruptcy of the corporation or any of its affiliates within two years of the person's proposed appointment as auditor of the corporation.

Saving

(3) No person shall be disqualified from acting as the auditor of a provincial corporation solely on the grounds that the person is a depositor in the corporation.

Resignation

(4) An auditor who becomes disqualified under this section shall resign forthwith upon becoming aware of the disqualification.

Application to Court

(5) An interested person may apply to the High Court of Justice for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

Auditor appointment for subsidiary

116. A provincial corporation shall, where possible, cause its auditor or one of its auditors to be appointed auditor of any body corporate in which the corporation has invested its funds under section 167, and where such appointment is not possible, the provincial corporation shall inform the Superintendent of the circumstances that prevent the appointment.

Examination

117.-(1) An auditor of a provincial corporation shall make such examination of the financial

statements required by this Act and the regulations to be placed before shareholders and of the annual return to be filed with the Superintendent under section 134 as is necessary to enable the auditor to report thereon and the auditor shall report as prescribed and in accordance with generally accepted auditing standards.

Reporting error

(2) A director or an officer of a provincial corporation shall forthwith notify the audit committee and the auditor or the former auditor, if applicable, of any error or misstatement of which the director or officer becomes aware in a financial statement or annual return filed with the Superintendent that the auditor or the former auditor has reported upon if the error or misstatement in all the circumstances appears to be material.

Idem

(3) If an auditor or former auditor of a provincial corporation is notified or becomes aware of an error or misstatement in a financial statement or return filed with the Superintendent upon which the auditor or former auditor has reported, and if in the opinion of the auditor or former auditor the error or misstatement is material, the auditor or former auditor shall inform each director.

Revised financial statements

(4) When under subsection (3) the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors shall promptly prepare and issue revised financial statements or otherwise inform the shareholders.

Notice to Superintendent

(5) When under subsection (3) the auditor or former auditor informs the directors of an error or misstatement in a return filed with the Superintendent, the directors shall promptly notify the Superintendent.

Right of access

(6) Upon the demand of an auditor of a provincial corporation, the present or former directors, officers, employees or agents of the corporation shall furnish such,

(a) information and explanations; and

(b) access to records, documents, books, accounts and vouchers of the corporation and any of its subsidiaries,

as are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section and that the directors, officers, employees or agents are reasonably able to furnish.

Idem

(7) Upon the demand of the auditor of a provincial corporation, the directors of the corporation shall,

(a) obtain from the present or former directors, officers, employees and agents of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees and agents are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under this section; and

(b) furnish the information and explanations so obtained to the auditor.

No liability

(8) A person who in good faith makes an oral or written communication under this section shall not be liable in any civil action arising therefrom.

Reports to board

118.-(1) The auditor shall report to the board of directors of the provincial corporation whenever, in the auditor's opinion,

(a) there has been any change in the circumstances of the corporation that might materially and adversely affect the financial position of the corporation; or

(b) there has been a contravention of this Act or the regulations.

Idem

(2) The auditor shall make a report under subsection (1) immediately upon becoming aware of a change or contravention referred to in that subsection.

Notice to Superintendent

(3) The auditor shall report to the Superintendent any matter dealt with in a report under this section which in the opinion of the

auditor could affect the well-being of the provincial corporation and has not been corrected or appropriately responded to by the board of directors within a reasonable time.

Financial statements, etc., to be given to shareholders

119.-(1) The directors of a provincial corporation shall place before each annual meeting of shareholders,

(a) financial statements in consolidated form for the year ending on the last day of October, November or December and before the annual meeting, made up of,

(i) a statement of income for the year,

(ii) a statement of retained earnings, or surplus for the year,

(iii) a statement of general reserve,

(iv) a statement of change in financial position,

(v) a balance sheet as at the end of the year,

and, if the corporation has completed a financial year, showing in each case the corresponding figures for the last preceding financial period of the corporation;

(b) the report of the auditor to the shareholders on the statements referred to in clause (1)(a);

(c) the financial statement of the corporation in unconsolidated form;

(d) the financial statement in consolidated form of every subsidiary of the corporation, and such statements may be presented in condensed form; and

(e) any further information respecting the financial position of the corporation and the results of its operations

required by its instrument of incorporation or its by-laws or by this Act or the regulations.

Copy of documents to shareholders

(2) A provincial corporation, not less than twenty-one days before each annual meeting of shareholders unless such period is waived by the shareholders, shall send a copy of the documents referred to in this section to each shareholder, except those who have informed the corporation in writing that they do not wish to receive copies of the documents.

Copy of documents to depositors

(3) A provincial corporation shall mail or deliver without charge a copy of the documents referred to in this section to every depositor of the corporation who in writing requests a copy.

Preparation of financial statements

120. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations and, except as otherwise required by this Act and the regulations, in accordance with generally accepted accounting principles.

Audit committee

121.-(1) The audit committee of a provincial corporation shall meet at least twice each year to review,

(a) any financial statements distributed to the shareholders;

(b) the annual returns of the corporation filed with the Superintendent under section 134;

(c) all reports of the auditor under section 118; and

(d) any reports or transactions required by the regulations to be reviewed by the audit committee.

Idem

(2) In the case of statements and returns that by or under this Act must be approved by the board of directors of a provincial corporation, the audit committee shall report thereon to the board before the approval is given.

Auditor's attendance at committee meetings

(3) The auditor of a provincial corporation is entitled to receive notice of the meetings of the audit committee and, at the expense of the corporation, to attend and be heard thereat, and, if so requested by a member of the committee, shall attend such meetings as may be requested.

Calling meeting

(4) The auditor of a corporation, a member of the audit committee or a director may call a meeting of the audit committee at any time.

Attendance at meetings of board of directors

(5) The auditor of a provincial corporation is entitled to attend, at the expense of the corporation, and be heard at meetings of the board of directors of the corporation on matters relating to his or her duties as auditor.

Approval by directors

122.-(1) The financial statements of a provincial corporation shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report shall be attached to or accompany the financial statements.

Publishing, etc., of financial statements

(2) A provincial corporation shall not issue, publish or circulate copies of the financial statements of the provincial corporation referred to in section 119 unless the financial statements are,

(a) approved and signed in accordance with subsection (1); and

(b) accompanied by the report of the auditor of the corporation.

Interim financial statement

123.-(1) A provincial corporation that is an offering corporation shall send to each shareholder a copy of an interim financial statement required to be filed under the Securities Act and the regulations thereunder.

R.S.O.1980, c.466

Idem

(2) The interim financial statement required by subsection (1) shall be sent to each shareholder, within sixty days of the date to which it is made up, at the shareholder's latest address as shown on the records of the corporation.

PART VIII

BOOKS, RECORDS AND RETURNS

Records

124.-(1) Where this Act requires a record to be kept by a corporation, it may be kept in a bound or looseleaf book or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device and it shall be kept for such period as may be prescribed.

Security of records and availability

(2) A corporation shall,

(a) take adequate precautions, appropriate to the means used, for guarding against the risk of falsifying the information recorded; and

(b) provide means for making the information available in an accurate and intelligible form within a reasonable time to any person lawfully entitled to examine the records.

Admissibility of records in evidence

(3) The bound or looseleaf book or, where the record is not kept in a looseleaf book, the information in the form in which it is made available under clause (2)(b) is admissible in evidence as *prima facie* proof, before and after dissolution of the corporation, of all facts stated therein.

False information

(4) No person shall remove, withold or destroy information required by this Act or the regulations to be recorded, or knowing any information to be untrue, shall,

(a) record or assist in recording it in a record; or

(b) make it available in a form referred to in clause (2)(b).

Location of records

125.-(1) Every registered corporation shall keep its instrument of incorporation and its by-laws at its principal place of business or at such place in

Ontario other than the principal place of business as the directors designate and the corporation shall maintain at the principal place of business or at the designated place,

(a) minutes of meetings and resolutions of shareholders;

(b) a register of directors in which are set out the names and residence addresses, while directors, including the street and number, if any, of all persons who are or have been directors of the corporation with the several dates on which each became or ceased to be a director; and

(c) a securities register complying with section 126.

Idem

(2) An extra-provincial corporation that does not have its head office in Ontario shall be deemed to have complied with subsection (1) if it maintains at a place in Ontario designated by the directors a copy of its instrument of incorporation and its by-laws, and a copy of every minute, resolution, record and register referred to in clauses (1)(a), (b) and (c).

Idem

(3) In addition to the records described in subsection (1), a provincial corporation shall maintain in Ontario, and a registered extra-provincial corporation shall maintain in Canada,

(a) adequate accounting records as required by this Act or the regulations;

(b) records containing minutes of meetings and resolutions of the directors and every committee thereof;

(c) a record of all investments held by the corporation; and

(d) copies of all returns to the Superintendent required by this Act or the regulations.

Idem

(4) In addition to the records described in subsections (1) and (3), a registered corporation shall maintain in Canada,

(a) a record of all depositors, their names and addresses as far as is known and the sums deposited by such depositors;

(b) where the corporation is a trust corporation, full and adequate records relating to the fiduciary activities of the corporation.

Securities register

126.-(1) A provincial corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities,

(a) the names, alphabetically arranged of persons who,

(i) are or have been within six years registered as shareholders of the corporation, the residency of such shareholders, the address including the street and number, if any, of every such person while a holder, and the number and class or series of shares registered in the name of such holder,

(ii) are or have been within six years registered as holders of subordinated notes of the corporation, the address including the street and number, if any, of every such person while a holder, and the principal amount of the subordinated notes registered in the name of such holder, or

(iii) are or have been within six years registered as holders of warrants of the corporation, the address including the street and number, if any, of every such person while a registered holder, and the class or series and number of warrants registered in the name of such holder; and

(b) the date and particulars of the issue of each security and warrant.

Transfer register

(2) A provincial corporation shall cause to be kept in Ontario a register of transfers in which all transfers of securities issued by the corporation in registered form and the date and other particulars of each transfer shall be set out.

Branch transfer registers

(3) A provincial corporation may maintain branch transfer registers at one or more places in Canada.

Transfer agents

127. For each class of securities issued by it, a provincial corporation may appoint,

(a) a trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons or agents to keep branch registers; and

(b) a registrar, trustee or agent to maintain a record of issued security certificates and warrants,

and, one person may be appointed for the purposes of both clauses (a) and (b) in respect of all securities and warrants of the corporation or any class or classes thereof.

Valid registration

128.-(1) Registration of the transfer of a security or warrant of a provincial corporation in the register of transfers or a branch register of transfers is a complete and valid registration for all purposes.

Entry in register of transfers

(2) Particulars of every transfer of securities and warrants registered in every branch register of transfers shall be recorded in the register of transfers.

Documents not required to be produced

(3) A provincial corporation or a person appointed under section 127 is not required to produce,

(a) any security certificate or warrant that is not in registered form; or

(b) any security certificate or warrant that is in registered form after six years,

(i) in the case of a share certificate, from the date of its cancellation,

(ii) in the case of a warrant, from the date of its transfer or exercise, whichever occurs first, or

(iii) in the case of a subordinated note, from the date of cancellation of the note.

Open to examination

129.-(1) The records mentioned in sections 125, 126 and 128 shall, during normal business hours of a corporation, be open to examination by any director.

Records of account at branch

(2) A registered corporation may keep at any place where it carries on business such parts of the accounting records as relate to the operations, business and assets and liabilities of the corporation carried on, supervised or accounted for at such place, but there shall be kept at the principal place of business of the corporation or such other place as is authorized under this Part such records as will enable the directors to ascertain the financial position of the corporation.

Copies

130. A shareholder of a provincial corporation is entitled upon request and without charge to one copy of the instrument of incorporation and the by-laws and the amendments thereto.

List of shareholders

131.-(1) Upon payment of a reasonable fee and upon sending to a provincial corporation or its transfer agent the statutory declaration described in subsection (6), any person who is a shareholder or holder of a subordinated note of the corporation, the person's agents or legal representatives and, where the corporation is an offering corporation, any other person, may require the corporation or its transfer agent to furnish within ten days of receipt by the corporation of the statutory declaration a basic list setting out

the names of the shareholders of the corporation, the number of shares of each class and series owned by each shareholder and the address of each shareholder, all as shown on the records of the corporation.

Idem

(2) The list referred to in subsection (1) when furnished shall be as current as is practicable having regard to the form in which the securities register of the corporation is maintained and shall be made up to a date not more than ten days before the date on which it is actually furnished.

Supplemental lists

(3) A person requiring a corporation to supply a list under subsection (1) may, if the person states in the statutory declaration described in subsection (6) that the person requires supplemental lists, require the corporation or its agent upon payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the names or addresses of the shareholders and the number of shares owned by each shareholder for each business day following the date to which the basic list is made up.

Idem

(4) The corporation or its agent shall furnish a supplemental list required under subsection (3),

(a) on the date the basic list is furnished, where the information relates to changes that took place prior to that date; and

(b) on the business day following the day to which the supplemental list relates, where the information relates to changes that take place on or after the date the basic list is furnished.

Idem

(5) A person requiring a corporation to supply a basic or supplemental list under this section may also require the corporation to include in the list the name and address of any known holder of an option or right to acquire shares of the corporation.

Statutory declaration

(6) The statutory declaration referred to in subsection (1) shall state,

(a) the name and address including street and number, if any, of the applicant and

whether the applicant is a shareholder, holder of a subordinated note or any other person referred to in subsection (1);

(b) if the applicant is a body corporate, its address for service; and

(c) that the basic list and any supplemental lists shall be used only as permitted under subsection (8).

Idem

(7) If the applicant is a body corporate, the statutory declaration described in subsection (6) shall be made by a director or officer of the body corporate.

Use of information

(8) A list of shareholders obtained under this section shall not be used by any person except in connection with,

(a) an effort to influence the voting by shareholders of the corporation;

(b) an offer to acquire shares of the corporation; or

(c) any other matter relating to the affairs of the corporation.

Trafficking in lists

132. No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the holders of securities or warrants of a provincial corporation.

Returns

133. Every registered corporation at the times prescribed shall provide to the Superintendent such financial or other information as may be prescribed.

Annual return

134.-(1) Every registered corporation shall prepare annually for the information of the Superintendent an annual return, on a consolidated basis and in the prescribed form, outlining the financial condition and affairs of the corporation at the fiscal year end of the corporation, and the return shall be filed with the Superintendent

within sixty days after the end of the period to which it relates.

Idem

(2) The return referred to in subsection (1) shall include, on an unconsolidated basis, the statement of the corporation and the statement of each of its subsidiaries.

Idem

(3) The return referred to in subsection (1) shall have attached to it a report of the auditor, which report shall be prepared in accordance with the regulations.

Idem

(4) The return referred to in subsection (1) shall be accompanied by a copy of a resolution of the directors showing that the return was adopted by them.

Filing of financial statements

135. Every registered corporation shall file with the Superintendent a copy of every statement of a financial nature furnished to its shareholders within five days after the distribution of the statement to the shareholders.

Filing of corporate changes

136. Every registered corporation shall file with the Superintendent,

(a) copies of all applications and supporting documents of any nature made under such laws, as may be prescribed, of Canada or of any province or territory of Canada for any change in its instrument of incorporation or registration status and shall also file with the Superintendent a copy of any approval or refusal of such application within seven days of filing or receipt, as the case may be; and

(b) copies of any changes made in its instrument of incorporation, registration or licence under the laws of Canada or of any province or territory of Canada.

Provision of information

137.-(1) Every registered corporation shall provide to the Trust Companies Association of Canada such financial and statistical information as may be prescribed.

Publication

(2) Where the Trust Companies Association of Canada receives information under subsection (1), it shall report to the public such financial and statistical information as is prescribed at such periods as may be prescribed.

Public file

138.-(1) The Superintendent shall maintain a file on each registered corporation which shall contain such information as may be prescribed.

Idem

(2) Upon payment of the prescribed fee, any person, during usual office hours, may examine the registers referred to in section 30 and the file referred to in subsection (1) and may take extracts therefrom or obtain copies thereof.

PART IX

CONFLICT OF INTEREST

Power to designate person as restricted party

139. For the purposes of this Part, the Superintendent may designate,

(a) any person to be a restricted party of a registered corporation if the Superintendent is of the opinion that,

(i) the person is acting in concert with a restricted party of the corporation to participate in or enter into an investment or other transaction with the corporation that would be prohibited or restricted if entered into with the corporation by the restricted party, or

(ii) there exists between the person and the corporation such an interest or relationship as might affect the exercise of the best judgment of the corporation with respect to an investment or other transaction; or

(b) any shareholder of a registered corporation or of an affiliate of a registered corporation to be a restricted party of the corporation if the Superintendent is of the opinion that the shareholder is acting in concert with one or more other shareholders of the corporation or of an affiliate to control directly or indirectly 10 per cent or more of any class of shares of the registered corporation.

Prohibitions, restricted parties

140.-(1) Except as provided in this Part,

(a) no registered corporation or subsidiary of a registered corporation shall

participate in, or enter into, any investment or other transaction with a restricted party of the corporation; and

(b) no restricted party of a registered corporation shall participate in, or enter into, any investment or other transaction with the corporation or any subsidiary of the corporation.

Idem, directors

(2) Notwithstanding any other provision of this Part, no registered corporation or subsidiary of a registered corporation shall invest by way of purchase of or loans on the security of real estate or personal property that at any time in the period of thirty-six months preceding the date of the advance of any funds by the corporation or its subsidiary was owned by a director or the spouse or child of the director or any relative of the director or spouse who has the same home as the director.

Exception

(3) Subsection (2) does not apply where the investment is a purchase of or a loan on the security of securities, as defined in section 1 of the Securities Act, for which there is a published market, as defined in section 88 of that Act.

R.S.O. 1980, c. 466

Permitted transactions, board approval

141.-(1) Subject to the prior approval of its board of directors, a registered corporation or a subsidiary of a registered corporation may,

(a) make a loan to any director, officer or employee of the corporation or to the spouse or any child of a director, officer or employee of the corporation on the security of the residence of the person to whom the loan is made if,

(i) the loan qualifies as an investment under clause 160(1)(a),

(ii) the amount of the loan does not exceed 0.5 per cent of the capital base of the corporation, and

(iii) in the case of a director who is not an employee or officer of the corporation or his or her spouse or child, the terms of the loan

are no more favourable than those offered by the corporation in the ordinary course of business;

(b) make a personal loan to any officer or employee of the corporation or to the spouse or any child of an officer or employee of the corporation if the loan qualifies as an investment under clause 160(2)(b);

(c) enter into written contracts with any restricted party for the provision of management services to or by the corporation or subsidiary so long as,

(i) the consideration is at or exceeds competitive and fair rates where the services are provided by the corporation or the subsidiary and is otherwise reasonable for the services provided, and

(ii) the consideration does not exceed competitive and fair rates where the services are provided to the corporation or the subsidiary and is otherwise not unreasonable for the services provided;

(d) enter into a written lease of real estate or personal property with any restricted party to the registered corporation or the subsidiary for its own use in carrying out its business, so long as,

(i) the rent does not exceed fair rental value,

(ii) the term of the lease and all renewals does not exceed five years, and

(iii) the terms of the lease are otherwise competitive and not unreasonable;

(e) enter into written contracts with any restricted party for pension and benefit plans and other reasonable commitments

incidental to the employment of officers and employees of the corporation;

(f) enter into employment contracts with officers or future officers of the corporation;

(g) enter into written contracts with any restricted party for the purchase of goods or services, other than management services, used or required by the corporation or the subsidiary in carrying on its business, so long as the price paid for such goods or services is competitive and at market value or fair rates, supported by appropriate documentation of such value or rates; and

(h) enter into such investments or other transactions as may be prescribed.

Loans to employees, board approval not required

(2) Notwithstanding clause (1)(a) or (b), a registered corporation may make a loan to an employee of the corporation who is not a director or officer of the corporation or to his or her spouse or child without obtaining the approval of the board of directors if the amount of the loan does not exceed $100,000 and there is compliance with subclauses (1)(a)(i) and (ii) or clause (1)(b), as the case may be.

Other permitted transactions, board approval not required

(3) A registered corporation or a subsidiary of a registered corporation, without the approval of the board of directors, may enter into,

(a) employment contracts with persons who are not directors or officers of the corporation;

(b) transactions with a restricted party which involve nominal or immaterial outlays or expenditures by the corporation or the subsidiary;

(c) transactions with a restricted party for the sale of goods or the provision of services normally provided by the corporation or the subsidiary in the ordinary course of business so long as the prices and rates charged by the

corporation or subsidiary are competitive and at fair rates; and

(d) such investments or other transactions as may be prescribed.

Onus on corporation

142. The onus of demonstrating that prices and rates are competitive or at fair rates, or that services are reasonable or that expenditures are immaterial, as the case may be, is upon the registered corporation or its subsidiary and the restricted party.

Trusts and estates

143.-(1) A registered trust corporation shall not participate in, or enter into, any investment or other transaction with a restricted party using funds held by the corporation as a fiduciary, other than funds held as deposits.

Idem

(2) Except as provided in this section, a registered trust corporation shall not invest funds held by the registered corporation as a fiduciary in any class of shares of the corporation or its affiliates.

Idem

(3) A registered trust corporation may act as a fiduciary of one or more trusts or estate that owns shares of the corporation or its affiliates if the shares were acquired before the corporation assumed responsibility as a fiduciary.

Idem

(4) Where a registered trust corporation acts as a fiduciary of one or more trusts or estates holding in the aggregate more than 10 per cent of any class of shares of the corporation or its affiliates, the shares shall not be sold or voted or an offer for the shares refused except with the approval of the board of directors and the reasons for such actions shall be entered in the minutes of the board of directors.

Idem

(5) Each year, the board of directors shall approve a report on the shares of the registered corporation or its affiliates held by the corporation as fiduciary and the reasons for the retention of the shares.

Idem

(6) Nothing in this section authorizes a registered trust corporation to perform any act as a fiduciary which is otherwise prohibited.

Idem

(7) Nothing in this section prevents a registered trust corporation from fulfilling a specific direction or permission of a court or of a trust instrument that the corporation should or may purchase or sell shares of the corporation or its affiliates or participate in, or enter into, any investment or other transaction with a restricted party but the corporation shall not exercise its discretion to invest by purchasing the shares of the corporation or its affiliates or by participating in, or entering into, an investment or other transaction with a restricted party.

Exemption

144.-(1) Upon the application of a registered corporation, the Superintendent, subject to such terms and conditions as he or she may impose, may consent to any investment or other transaction set out in this Part, with a restricted party if, in the Superintendent's opinion, the consent is necessary to the well-being of the registered corporation.

Idem

(2) Subsection (1) does not apply so as to permit the Superintendent to consent to an investment or other transaction that is prohibited by section 143.

Disclosure of interest

145.-(1) A restricted party who is a party to an investment or other transaction with a registered corporation or a subsidiary of a registered corporation or to a proposed investment or other transaction with the corporation or the subsidiary for which the approval of the board of directors of the corporation is required, whether under this Act or otherwise, shall disclose in writing to the corporation the nature of the restricted party's interest.

Disclosure of cross-directorship

(2) A director or officer of a registered corporation, with respect to an investment or other transaction with the corporation or a subsidiary of the corporation or with respect to a proposed investment or other transaction with the corporation or the subsidiary, shall disclose the nature of the interest if,

(a) he or she is a director or an officer of a body corporate that is a party to any investment or other transaction of the

corporation or the subsidiary or a proposed investment or other transaction of the corporation or subsidiary; or

(b) he or she holds 10 per cent or more of the shares of a body corporate described in clause (a).

Disclosure by director

(3) The disclosure required by subsection (1) or (2) shall be entered in the minutes of the board of directors and shall be made, in the case of a director,

(a) at the meeting at which a proposed investment or other transaction is first considered;

(b) if the director was not then interested in a proposed investment or other transaction, at the first meeting after becoming interested;

(c) if the director becomes interested after an investment or other transaction is entered into, at the first meeting after becoming interested; or

(d) if a person who is interested in an investment or other transaction later becomes a director, at the first meeting after becoming a director.

Disclosure by others

(4) The disclosure required by subsection (1) or (2) shall be made, in the case of a restricted party who is not a director,

(a) forthwith after becoming aware that the investment or other transaction or proposed investment or other transaction is to be considered or has been considered at a meeting of directors;

(b) if the restricted party becomes interested after an investment or other transaction is entered into, forthwith after becoming interested; or

(c) if a person who is interested in an investment or other transaction later becomes a restricted party, forthwith after becoming a restricted party.

Director not to vote

(5) A director required by subsection (1) or (2) to make a disclosure shall not take part in the discussion or vote on any resolution to approve a loan or investment or transaction in relation to which disclosure is required under subsection (1) or (2) and the director shall not be present at any meeting of the board while it is dealing with the matter.

Director not to use influence

(6) A director referred to in subsection (5) shall not attempt in any way to influence the voting on any resolution to approve an investment or other transaction.

Procedures

146.-(1) Every registered corporation shall establish and its board of directors shall approve written review and approval procedures to be followed by the corporation to ensure compliance with this Part, and the board of directors shall review the procedures so established at least once each year.

Idem

(2) The procedures referred to in subsection (1) shall be developed by the investment committee of the board of directors and shall be reviewed at least twice each year by the investment committee.

Voidable contract

147. Where a restricted party, a registered corporation or any subsidiary of a registered corporation fails to comply with this Part, and where an investment or other transaction which is prohibited by this Part takes place, the corporation or the Superintendent may apply to the High Court of Justice for an order setting aside the investment or other transaction and directing that the restricted party account to the registered corporation for any profit or gain realized and upon such application the court may so order or make such other order as it thinks fit, including compensation for the loss or damage suffered by the corporation and punitive or exemplary damages from the restricted party.

Derivative action

148.-(1) Where an investment or other transaction that is prohibited under this Part takes place, a registered corporation or the Superintendent may apply to the High Court of Justice for an order that each person who

participated in or facilitated such investment or other transaction made in contravention of this Part, pay to the corporation on a joint and several basis,

(a) the damages suffered;

(b) the face value of the investment; or

(c) the amount expended by the corporation in the transaction.

Saving

(2) Subsection (1) does not apply,

(a) to a person who is not a director, unless the person knew or ought reasonably to have known that the investment or other transaction was made in contravention of this Part; or

(b) to a person who reports as required by section 149 or 150 with respect to the investment or other transaction.

Reporting by auditor

149.-(1) An auditor shall promptly report to the board of directors any breach of any provision of this Part of which he or she is aware or of which he or she is made aware under section 150 and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall promptly report the breach to the Superintendent.

Reporting by others

150.-(1) Any person undertaking professional services for the registered corporation, other than an auditor under section 149, who in providing the professional services becomes aware of a breach of the provisions of this Part shall promptly report the breach to the board of directors and the auditor of the corporation.

Professional advice

(2) No person undertaking professional services for a registered corporation shall advise the registered corporation or perform services for the corporation in an investment or other transaction in or to which the person is a party or has a direct or indirect beneficial interest.

Solicitor-client privilege

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

No liability

151. A person who in good faith makes a report under subsection 150(1) shall not be liable in any civil action arising therefrom.

PART X

BUSINESS AND INVESTMENTS

Prudent investment standards

152.-(1) Every registered corporation shall adhere to prudent investment standards in making investment decisions and in managing its total investments.

Interpretation

(2) For the purposes of this Act, prudent investment standards are those which a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship to make such investments, without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation.

Procedures

(3) Every registered corporation shall establish procedures to ensure that prudent investment standards are applied by the corporation in making investment decisions and in managing the total investments of the corporation.

Development of procedures

(4) The procedures referred to in subsection (3) shall be developed by the investment committee of the board of directors of the corporation and shall be reviewed at least twice each year by the investment committee.

Idem

(5) The investment committee shall report its recommendations, if any, with respect to the procedures referred to in subsection (3) to the board of directors.

Approval by board

(6) The procedures referred to in subsection (3) shall be subject to the approval of the board of directors and the board, upon receipt of any recommendation from the investment committee, shall review such procedures and make such changes as may be necessary.

Deposits, loan corporations

153.-(1) A registered provincial loan corporation and any other registered loan corporation that has capacity to do so may, in a debtor and creditor relationship, receive money,

(a) repayable on demand or after notice; or

(b) repayable upon the expiry of a fixed term,

and the corporation may issue debentures or other evidences of indebtedness in respect thereof, appropriate to the debtor and creditor relationship created thereby.

Deposits, trust corporations

(2) A registered provincial trust corporation and any other registered trust corporation that has capacity to do so may, for the purpose of investment, receive money,

(a) repayable upon demand or after notice; or

(b) repayable upon the expiry of a fixed term,

and the corporation may issue investment certificates or other evidences of the money received, appropriate to the trust relationship created thereby.

Idem

(3) Money received by a trust corporation under subsection (2) shall be deemed to be held by it in trust for its depositors and it shall be deemed to guarantee the repayment thereof.

Idem

(4) Notwithstanding subsection (3), a trust corporation may retain the interest and profit resulting from the investment of money received by it under subsection (2) in excess of the amount of interest payable to its depositors in respect thereof.

Idem

(5) Every trust corporation receiving money as authorized by subsection (2) shall earmark and set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection, "cash" includes moneys on deposit and "securities" includes investments authorized under sections 160 to 164 and 168.

Idem

(6) An investment certificate or other evidence of money received issued by a trust corporation shall indicate that it is guaranteed only as against the assets of the corporation.

Deposit insurance

154.-(1) No registered corporation shall exercise the powers mentioned in section 153 unless it holds a certificate or policy of deposit insurance issued by the Canada Deposit Insurance Corporation or by some other public agency approved by the Superintendent.

Idem

(2) A provincial corporation, with the approval of the Superintendent may borrow money from the Canada Deposit Insurance Corporation or other similar public agencies approved by the Superintendent, and, for such purposes, the corporation may mortgage thereto the cash and securities earmarked and set aside under section 153.

Borrowing multiples, limits

155.-(1) Subject to subsections (2) and (4), the total amount,

(a) received as deposits and otherwise borrowed by a registered loan corporation; and

(b) received as deposits and borrowed by a registered trust corporation,

shall not exceed, at any time, an amount equal to ten times its capital base.

Exclusions from calculation

(2) Amounts borrowed by a registered corporation by way of subordinated notes and by way of mortgages on real estate owned by the corporation shall not be included in a determination of a total amount under subsection (1).

Increase in borrowing multiple

(3) On the application of a registered corporation, the Superintendent, by order and subject to such terms and conditions as may be set out in the order, may increase the total amount that may be borrowed or received by the corporation to an amount equal to such multiplier in excess of ten times but not exceeding twenty-five times its capital base as may be set out in the order and subsections (1) and (2) shall be deemed to apply to such increased amount, substituting the new multiplier for "ten" in subsection (1).

Borrowing over limit

(4) A registered corporation may exceed, at any time, the limit on its borrowing multiple as set out in subsection (1) or as set out in an order under subsection (3) if the board of directors has approved, by a resolution passed on an annual

basis, the exceeding of the limit and so long as the amount by which the limit is exceeded is invested in a manner prescribed by the regulations.

Copy of special resolution

(5) No order shall be made under subsection (3) unless the application of the corporation is accompanied by a certified copy of a special resolution of the corporation supporting the increase requested under subsection (3).

Subordinated notes

156.-(1) A registered corporation may borrow money by way of the issue of notes having a denomination of at least $100,000.

Idem

(2) A note issued under this section shall be known as a subordinated note and the following provisions apply to every such note:

1. A subordinated note is not a deposit of the issuing corporation and is not insured by the Canada Deposit Insurance Corporation or any similar public agency.

2. In the event of the insolvency or winding up of the corporation, the indebtedness evidenced by each subordinated note ranks equally with the indebtedness evidenced by all other subordinated notes of the corporation and is subordinated in right of payment to all other indebtedness of the corporation.

3. Every subordinated note shall be evidenced by a certificate in a form approved for the corporation by the Superintendent and containing a statement of the terms set out in paragraphs 1 and 2 and such other information as the Superintendent, in approving the form, may require.

4. A subordinated note shall not be issued by a registered corporation except on application to its secretary.

Idem

(3) No registered corporation or person acting on its behalf, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the corporation, shall refer to the note otherwise than as a subordinated note and the registered corporation or person, as the case may

be, shall indicate clearly therein that the subordinated note is not a deposit that is insured by the Canada Deposit Insurance Corporation or other similar public agency.

Pledging for liquidity reasons

157.-(1) A registered corporation may pledge any of its own assets as security for a debt obligation of the corporation, if the debt obligation is issued in respect of money borrowed to enable the corporation to meet short term requirements for liquid funds arising from its operations and if the total debt obligation of the corporation in relation to which assets are so pledged does not exceed 50 per cent of the capital base.

Exception

(2) Subsection (1) does not apply so as to prevent a pledge of assets to the government of Canada with respect to the sale of Canada Savings Bonds or such other transactions as may be named in the regulations.

Notice to Superintendent

(3) A corporation pledging any asset under subsection (1) shall promptly notify the Superintendent in writing of the amount so secured and of the nature of the asset pledged as security.

Borrowing without security

(4) A registered trust corporation shall not borrow money, except from a bank or a registered corporation that is not an affiliate of the trust corporation, unless it gives security therefor or unless it is borrowing by way of subordinated notes.

Receiver prohibited

(5) Any agreement under which a creditor of a registered corporation is authorized by reason of the failure of the corporation to make payment in respect of a debt obligation to appoint a receiver or acquire control of the corporation or of any asset of the corporation, other than an asset pledged as security under subsection (1) or (2), is void.

Pledge to restricted party prohibited

(6) A registered corporation shall not pledge any of its assets to a restricted party of the corporation.

Liquidity

158. Every registered corporation, at all times, shall maintain liquid assets in such form and amounts and in such manner as is prescribed.

Restriction on investments

159.-(1) Except as provided in this Act, no registered corporation shall participate in or enter into any investment.

Shares of financial institution

(2) No registered corporation shall purchase, directly or indirectly,

(a) shares or subordinated notes of any other corporation except under section 28 or clause 167(1)(c) or (d); or

(b) shares of any bank.

Eligible investments

160.-(1) A registered corporation may invest by way of purchase of or loans on the security of,

mortgages

(a) mortgages upon improved real estate in Canada so long as the amount paid for or advanced on any mortgage, together with the amount of indebtedness under any mortgage, on the real estate ranking equally with or prior to the mortgage, in which the purchase or loan is made, does not exceed the lending value of the real estate to which the mortgage relates unless,

(i) the loan for which the mortgage is security is an approved loan or an insured loan under the National Housing Act (Canada), or

R.S.C.1970, c.N-10

(ii) the excess is guaranteed or insured through an agency of the government of Canada or of a province of Canada or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the Canadian and British Insurance Companies Act (Canada), the Foreign Insurance Companies Act (Canada) or the Insurance Act or similar legislation of any province or territory of Canada;

R.S.C.1970, cc. I-15, I-16

R.S.O.1980, c.218

debentures, bonds

(b) debentures, bonds or other evidences of indebtedness,

(i) of or guaranteed as to principal and interest by the government of Canada or of a province of Canada,

(ii) of or guaranteed by a foreign country or state forming part of such foreign country where the interest on the securities of such foreign country or state has been paid regularly when due for the previous ten years,

(iii) of any municipality or school board in Canada or guaranteed by any municipality in Canada, or secured by rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality or school board for the jurisdiction in which the property is situated,

(iv) of any company that are secured by a mortgage to a trust corporation in Canada, other than the investing corporation or its affiliate, either singly or jointly with another trustee upon improved real estate of such company or other assets of such company of the classes in clause (a) or subclause (i), (ii), (iii) or (v),

(v) of a company incorporated in Canada that are secured by the assignment to a trust corporation in Canada, other than the investing corporation or its affiliate, of payments that the government of Canada or of a province of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds or debentures outstanding and to meet the principal amount of the bonds or debentures upon maturity,

but if the investment is by way of loan, the amount of the loan shall not exceed at any time the market value of the security given as collateral;

Idem

(c) bonds, debentures or other evidences of indebtedness of or guaranteed by any company,

(i) if, at the date of investment, the common shares of the company are authorized as investments by clause (e), or

(ii) where the company has been in bona fide operation for at least five years and the earnings of the company in a period of five fiscal years ending less than one year before the date of investment have been equal to at least ten times and in each of any four of the five years have been equal to at least 1.5 times the annual interest requirements at the date of investment on all indebtedness of or guaranteed by it other than indebtedness classified as a current liability in the balance sheet of the company, and if the company at the date of investment owns directly or indirectly more than 50 per cent of the common shares of another company that has been in bona fide operation during the previous five years, the earnings of the companies during the said period of five years shall be consolidated with due allowance for minority interests, if any, and in that event the interest requirments of the companies shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the company (and for the purpose of this subclause, "earnings" means earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability),

but if the investment is by way of loan, the amount of the loan shall not exceed at any time the market value of the security given as collateral;

preferred shares

(d) the preferred shares of a company, where, at the date of the purchase, the common shares of the company are authorized as investments by clause (e) or, if the investment is by way of loan, where the amount of loan does not exceed, at any time, the value of the security given as collateral;

common shares

(e) the fully paid common shares of a company that in a period of five fiscal years that ended less than one year before the date of the purchase or loan has been in bona fide operation for at least five years and during that five year period has either,

(i) paid a dividend in four of the five years upon its common shares, or

(ii) had earnings in four of the five years available for the payment of a dividend upon its common shares,

of at least 5 per cent of the average value of the common shareholders equity during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be, but if the investment is by way of a loan, the amount of the loan shall not exceed at any time the market value of the security given as collateral;

life insurance policy

(f) mortgages or assignments of life insurance policies if at the date of the loan such policy has an ascertained cash surrender value admitted by the insurer at least equal to the amount of the loan;

deposits in banks

(g) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or

endorsed by a bank but if the investment is by way of loan, the amount of the loan shall not exceed, at any time, the market value of the security given as collateral;

deposits in registered corporation

(h) deposits in a corporation in Canada if,

(i) at the date of investment, the common shares of the corporation would be an authorized investment under clause (e) if the corporation were a company, or

(ii) the deposit is fully insured or fully guaranteed by the government of Canada or of a province of Canada or by an agency thereof; or

credit unions

(i) deposits in a credit union or caisse populaire if the deposit is fully insured or fully guaranteed by the government of Canada or of a province of Canada or by an agency thereof.

Government guaranteed loans, personal loans, commercial lending

R.S.C.1970, cc.S-17,F-3, F-22,S-10

(2) A registered corporation may,

(a) if designated as a bank or a lender, as the case may be, under the Canada Student Loans Act, the Farm Improvement Loans Act (Canada), the Fisheries Improvement Loans Act (Canada) or the Small Businesses Loans Act (Canada), lend money by way of guaranteed loans under and in accordance with the Acts for which it has been designated;

(b) make personal loans to any individual, with or without security, not exceeding the greater of $25,000 and the individual's annual income; and

(c) make loans for business or commercial purposes not authorized by any other provision of this Act payable on demand or in less than one year to companies, partnerships, proprietorships and joint ventures.

Leases and conditional sale agreements

(3) A registered corporation may invest by way of loan were the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract but only if the investment is for a fixed term and,

(a) the lessee or conditional purchaser is the government of Canada or of a province of Canada or any agency thereof or any municipality in Canada; or

(b) the lessee or conditional purchaser is a company incorporated in Canada or is a subsidiary of a company incorporated in Canada, and at the date of the investment,

(i) the shares of the company incorporated in Canada are authorized as investments under clause (1)(e),

(ii) the company incorporated in Canada is a company described in subclause (1)(c)(ii), or

(iii) the subsidiary's lease or sales agreement is guaranteed by a company described in subclause (i) or (ii).

Restrictions on personal loans, commercial lending, leases and conditional sales agreements

(4) A registered corporation shall not make investments,

(a) under clause (2)(b) or (c) or clause (3)(b) unless,

(i) it has received the prior approval of the Superintendent to do so, and

(ii) it complies with the terms and conditions, if any, imposed on the corporation with respect to such investments;

(b) under clause (2)(b) unless the aggregate total of such investments is 10 per cent or less of the total assets of the corporation or such lower percentage as the Superintendent may approve;

(c) under clause (2)(c) unless,

(i) the capital base of the corporation is equal to or exceeds $15,000,000, and

(ii) the aggregate total of such investments is 10 per cent or less of the total assets of the corporation or such lower percentage as the Superintendent may approve; and

(d) under clause (3)(b) unless the aggregate total of such investments is 10 per cent or less of the total assets of the corporation or such lower percentage as the Superintendent may approve.

Real estate for the production of income

161.-(1) A registered corporation, by way of purchase, may invest in improved real estate in Canada for the production of income.

Idem

(2) The total book value of the investments in real estate under this section, whether in a corporation or in a subsidiary of the corporation, shall not exceed 5 per cent of the total assets of the corporation and not more than 1 per cent of the total assets of the corporation may be invested in any one parcel of real estate purchased under this section.

Real estate for own use

162.-(1) A registered corporation, by way of purchase, may invest in improved real estate in Canada that is or is to be occupied by the corporation for its own use.

Idem

(2) For the purposes of this section, real estate purchased by a subsidiary of a registered corporation that is occupied and used by the subsidiary for its own purposes shall be deemed to be real estate purchased by the registered corporation under this section.

Restriction

(3) The total book value of the investments in real estate occupied by a registered corporation and its subsidiaries under this section whether in the corporation or in a subsidiary shall not exceed an amount equal to the capital base of the corporation.

Exclusion of foreclosed real estate from determination of total book value

163. The book value of real estate that has been mortgaged to a corporation or any of its subsidiaries and that has been acquired by the corporation or the subsidiary to protect its investment and of real estate that has been conveyed to it or any of its subsidiaries in satisfaction of debts previously contracted in the course of the corporation's business or that of the subsidiary need not be included in determining total book value of real estate for the purposes of subsection 161(2) or 162(3).

"Open basket"

164.-(1) A registered corporation, by way of purchase or loan, may make investments not authorized by section 160, 161 or 162 if the investment is not prohibited under any other provision of this Act so long as the total book value of investments made under this section and held by the corporation does not exceed 5 per cent of the total assets of the corporation.

Idem

(2) Subsection (1) does not apply so as to,

(a) enlarge the authority conferred by this Act to invest in mortgages, or to lend on the security of real estate;

(b) affect the limit of 5 per cent of the total assets that may be invested in real estate under section 161; or

(c) permit a corporation to make loans under clause 160(2)(c).

Idem

(3) Where a corporation has received the approval of the Superintendent to make investments under clause 160(2)(b) or clause 160(3)(b), the corporation shall not make any such investments under subsection (1).

Investment limits

165.-(1) Notwithstanding any other provision of this Act, a corporation shall maintain at all times at least 50 per cent of its total assets, excluding assets of subsidiaries, in,

(a) bonds, debentures or other evidences of indebtedness,

(i) of or guaranteed by the government of Canada or any province of Canada,

(ii) of any municipality or school board in Canada, or guaranteed by any municipality in Canada, or secured by rates or taxes levied under the law of any province of Canada on property in such province and collectable by or through the municipality or school board for the jurisdiction in which such property is situated;

(b) first mortgages, upon real estate in Canada;

(c) bonds, debentures or other evidences of indebtedness of a company that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity;

(d) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by a bank;

(e) deposits in a registered corporation; or

(f) any combination of cash and the investments referred to in clauses (b) to (e).

Third and subsequent mortgages

(2) Investments by a registered corporation in third and subsequent mortgages shall be limited to 2 per cent of the total assets of the corporation.

Idem

(3) For the purposes of subsection (2), an investment in a third or subsequent mortgage by a subsidiary of a corporation shall be deemed to be an investment in the mortgage by the corporation.

Shares

(4) No registered corporation shall make an investment in shares the effect of which will be that the corporation will hold in the aggregate shares carried on its books at more than 25 per cent of its total assets.

Idem

(5) For the purposes of subsection (4), an investment in shares by a subsidiary of a corporation shall be deemed to be an investment by the corporation.

Restrictions on amount of single investments

166. No corporation shall, directly or indirectly,

(a) except as to securities issued or guaranteed by the Government of Canada, including mortgages insured under the National Housing Act (Canada), or the government of any province of Canada or by any municipality in Ontario, invest an amount exceeding 1 per cent of the corporation's total assets to persons that to the knowledge of the corporation are related; or

R.S.C.1970, c.N-10

(b) make any investment the effect of which will be that the corporation will hold more than 10 per cent of the voting shares of any one body corporate.

Investment in subsidiaries

167.-(1) Subject to such terms and conditions concerning subsidiaries as may be prescribed, a registered corporation may with its own funds, establish or acquire as a subsidiary,

(a) any company incorporated in Canada to acquire, hold, maintain, improve, lease or manage real estate or leaseholds or to act as agent in the sale or purchase of real estate or leaseholds;

(b) with the prior approval of the Superintendent and subject to such terms and conditions as the Superintendent may impose or as may be prescribed, any company incorporated in Canada to carry on any other business activity reasonably ancillary to the business of a corporation;

(c) a loan corporation, if the investing corporation is a trust corporation; and

(d) a trust corporation, if the investing corporation is a loan corporation.

Prohibition

(2) A subsidiary described in subsection (1) shall not invest its funds except as provided for registered corporations in this Act.

Idem

(3) Subsection (2) does not apply to a subsidiary described in clause (1)(b) so long as the corporation satisfies all terms and conditions imposed by the Superintendent or the regulations.

Other investments authorized

168. The Lieutenant Governor in Council may authorize the acceptance by a registered corporation of bonds, notes, shares, debentures or other assets not fulfilling the requirements of this Act,

(a) obtained in payment or part payment for securities sold by the corporation;

(b) obtained under a bona fide arrangement for the reorganization of a body corporate whose securities were previously owned by the corporation;

(c) obtained under an amalgamation with another body corporate of the body corporate whose securities were previously owned by the corporation;

(d) obtained for the bona fide purpose of protecting investments of the corporation;

(e) obtained by virtue of the purchase by the corporation of the assets of another corporation; or

(f) obtained by virtue of realizing a security for a loan where the security is shares in a body corporate and the effect of realizing such security is that a registered corporation shall hold

more than 10 per cent of any class of shares in any one body corporate,

but the bonds, notes, shares or debentures or other assets whose acceptance is so authorized shall be sold and disposed of within five years after the acquisition thereof, or within such further time not exceeding one year as the Lieutenant Governor in Council, on the report of the Superintendent, may fix and determine, unless it can be shown to the satisfaction of the Superindentent that the bonds, notes, shares, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted.

Personal security as collateral

169.-(1) A registered corporation may take real or personal property as collateral security for any advance or for any debt due to the corporation in addition to any security required by or under this Act.

Allocation of security

(2) A single loan that is secured by two or more assets or classes of assets that would, but for this subsection, not be an investment of the corporation permitted by or under this Act may be divided into different amounts and considered as separate loans with respect to each asset or class of assets for the purposes of determining whether the loan is permitted by or under this Act.

Determination of eligibility of investments

170.-(1) For the purpose of determining the eligibility of investments under this Act of the shares of a continuing body corporate formed as a result of the amalgamation of two or more bodies corporate, the continuing body corporate is deemed for the purposes of this subsection, to have dividend and earnings records for any relevant period prior to the date of the amalgamation identical with the dividend and earnings record of the amalgamating bodies corporate determined on the basis of a consolidation of their accounts.

Idem

(2) For the purpose of determining the eligibility as investments under this Act of the shares of a body corporate that has been voluntarily reorganized without the impairment of

the status or value of its securities, dividends paid on the shares of the body corporate before the reorganization may be counted as dividends paid on such shares prospectively of the reorganized body corporate.

Common trust funds authorized

171.-(1) Notwithstanding this or any other Act, every provincial trust corporation and any other registered trust corporation that has capacity to do so may, unless the trust instrument otherwise directs, invest trust money in one or more common trust funds of the trust corporation and, where trust money is held by the trust corporation as a co-trustee, the investment thereof in a common trust fund may be made by the trust corporation with the consent of its co-trustees.

Exception

(2) A common trust fund authorized by subsection (1) shall not include any money in relation to a trust established exclusively for savings plans registered under the Income Tax Act (Canada).

R.S.C.1952, c.146

Idem

(3) No common trust fund shall be established or operated except as provided for in the regulations.

Passing of accounts

(4) A trust corporation may, at any time, and shall, when required in writing by the Superintendent so to do under subsection (5), file and pass an account of its dealings with respect to a common trust fund in the surrogate court having jurisdiction in the place in which the fund is being administered, and the court, on the passing of the account, has, subject to this section, the same duties and powers as in the case of the passing of executors' accounts.

When account final

(5) An account filed with the Superintendent in accordance with the regulations, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust corporation's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed, the Superintendent requires in writing that the account be filed and passed in the surrogate court.

Accounting only necessary under this section or regulations

(6) Notwithstanding any other Act or law, a trust corporation shall not be required to render an account of its dealings with a common trust fund except as provided in this section or the regulations.

Time and place for passing of account

(7) Upon the filing of an account under this section, the court shall fix a time and place for the passing of the account, and the trust corporation shall cause a written notice of the appointment and a copy of the account to be served upon the Superintendent at least fourteen days before the date fixed for the passing, and the trust corporation shall not be required or give any other notice of the appointment.

Form of account

(8) For the purposes of an accounting under this section, an account may be filed in the form of audited accounts filed with the Superintendent in accordance with the regulations.

Superintendent to represent persons having interest in fund

(9) Upon the passing of an account under this section, the Superintendent shall represent all persons having an interest in the funds invested in the common trust fund, but any such person has the right, at the person's own expense, to appear personally or to be separately represented.

Approval of court

(10) Where an account filed under this section has been approved by the surrogate court, the approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust corporation's administration of the common trust fund for the period covered by the account.

Costs

(11) The costs of passing an account under this section shall be charged to principal and income of the common trust fund in such proportions as the surrogate court considers proper.

Mutual funds

R.S.O.1980, c.466

172. A registered trust corporation administering, promoting or operating a mutual fund to which the Securities Act applies shall file with the Superintendent proof of the fund's acceptability to the Ontario Securities Commission.

Extent of liability

173.-(1) The liability of a registered trust corporation to persons interested in an estate held by the trust corporation as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee is the same as if the estate had been held by a private person in the like capacity, and the corporation's powers are the same.

Approval of the corporation as executor, etc.

(2) Where a registered trust corporation is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant Governor in Council approves of the corporation being accepted as a trust corporation for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the corporation, appoint the corporation to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the corporation probate of any will in which the corporation is named as an executor.

Appointment as trustee

(3) A registered trust corporation approved by the Lieutenant Governor in Council under subsection (2),

(a) may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee;

(b) may be appointed to any of the offices mentioned in subsection (2) jointly with another person; and

(c) the appointment may be made whether the trustee is required under a deed, will or document creating a trust or whether the appointment is under the Trustee Act or otherwise.

R.S.O.1980, c.512

Security not required

(4) Notwithstanding any rule, practice or statutory provision, it is not necessary for a trust corporation approved under subsection (2) to give any security for the due performance of its duty as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless so ordered by a court.

Trusts

174.-(1) A registered corporation is not bound to see to the execution of any trust, whether express, implied or constructive, other than a trust to which the corporation is a party, to which any of its deposits are subject.

Sufficient discharge

(2) The receipt of the person in whose name any deposit stands in the books of the corporation to which subsection (1) applies is a sufficient discharge to the corporation for any payment made in respect thereof, and a direction to transfer, signed by the person in whose name any such deposit stands in the books of the corporation, is sufficient authority to the corporation for any transfer made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the corporation has or has not had notice of the trust.

Application of money paid

(3) A corporation is not bound to see to the application of any money paid upon a receipt under subsection (2).

PART XI

ADMINISTRATION

Appointment of Superintendent

175.-(1) The Lieutenant Governor in Council shall appoint an officer of the Ministry to be the Superintendent of Deposit Institutions who shall carry out the duties and exercise the powers of the Superintendent under this Act.

Appointment of Director

(2) The Superintendent may appoint an officer of the Ministry to be Director of Loan and Trust Corporations to carry out the duties and exercise the powers of the Director under this Act.

Appeal panels

176.-(1) When an appeal is requested under this Act, the Minister shall appoint a panel to hear the appeal.

Composition

(2) An appeal panel shall consist of two persons who are not public servants and the Superintendent.

Secretary

(3) The Superintendent shall act as secretary of every appeal panel.

Chairman

(4) In appointing an appeal panel, the Minister shall name one of the persons who is not a public servant to be the chairman of the panel.

Idem

(5) No individual shall be disqualified from acting as a member of an appeal panel solely on the grounds that he or she is a depositor in the corporation which is the subject of the proceedings before the panel.

Remuneration

(6) The members of an appeal panel, other than the Superintendent, shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time may determine.

Application of R.S.O.1980, c.274

(7) Section 8 of the Ministry of Consumer and Commercial Relations Act applies to members of an appeal panel.

No grants or gratuities to Ministry officials

177.-(1) No officer or employee of the Ministry performing duties or exercising powers under this Act shall accept or receive, directly or indirectly, any grant or gratuity from a corporation or any affiliate of a corporation or from any director, officer, employee or agent of a corporation or affiliate of a corporation and no corporation, director, officer, employee or agent of a corporation or any affiliate of a corporation shall make or give, directly or indirectly, any such grant or gratuity.

Interest as shareholder

(2) No officer or employee of the Ministry performing duties or exercising powers under this Act shall hold any shares of any corporation.

Capacity outside Ontario

178. The Superintendent and Director may, for the purposes of the administration and enforcement of this Act and the regulations, act outside Ontario as if they were acting inside Ontario.

Records

179.-(1) Records required by this Act to be prepared and maintained by the Superintendent or Director may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system or mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

Admission as evidence

(2) When records maintained by the Superintendent or Director are prepared and maintained other than in written form,

(a) the Superintendent or Director as the case may be shall furnish any copy required to be furnished in intelligible written form; and

(b) a report reproduced from those records, if it is certified by the Superintendent or Director, is, without proof of the office or signature thereof, admissible in evidence to the same extent as the original written records would have been.

Idem

(3) Neither the Superintendent nor the Director shall be required to produce any document where a copy of the document is furnished in compliance with clause (2)(a).

Power to require evidence

180.-(1) In pursuance of his or her duties under this Act, the Superintendent or Director may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment of stenographer

(2) The evidence and proceedings in any matter before the Superintendent or Director may be reported by a stenographer who has taken an oath before the Superintendent or Director faithfully to report the same.

Examinations, audits and inspections, general

181.-(1) It is a condition of the registration of a corporation that it facilitate examinations, audits and inspections under this Act.

Material to be furnished

(2) For the purpose of an examination, audit or inspection under this Act, the registered corporation shall prepare and submit to the person conducting the examination, audit or inspection such statements or returns with respect to its business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent or Director may require, and the officers, agents and servants of the corporation shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power.

Production of books

(3) In order to facilitate an examination, audit or inspection of the books and records of a registered corporation, the corporation may be required by the Superintendent or the Director to produce the books and records at the principal place of business of the corporation in Ontario, or at such other convenient place as the Superintendent or Director may direct.

Expense of further inspection

(4) On the direction of the Superintendent or Director, where an examination, audit or inspection of a corporation is made at an office situate outside Ontario, the corporation shall pay the costs and expenses in connection with such examination, audit or inspection.

Annual inspection of registered corporations

182.-(1) Once each year or during such other period as the Superintendent may consider appropriate for a particular corporation, the Superintendent shall examine or cause a person acting under his or her direction to examine the statements of the condition and affairs of each registered corporation and the Superintendent or person shall make such inquiries as are necessary to ascertain the corporation's condition and ability to meet its obligations as and when they become due, the procedures and standards of its management and whether or not the corporation has complied with this Act and the regulations and any requirement, order, term, condition or restriction of registration or inquiry made thereunder.

Idem

(2) In conducting the examination required by subsection (1), the Superintendent or other person shall attend at the principal place of business of the corporation and, if he or she considers it necessary, the Superintendent or person acting may visit any branch of the corporation.

Reliance on inspection by another government

(3) If the Superintendent is satisfied that an examination of a registered extra-provincial corporation conducted by the government of Canada or of any province or territory of Canada complies with the standards required by the Superintendent for the examination of a corporation under subsection (1), the Superintendent may accept such examination, in whole or in part, as if it were an examination by the Superintendent under subsection (1).

Examination by Director

183. The Director, or any person designated by the Director, may at any time within business hours, examine any books of or in the possession of a registered corporation relating to its business, wherever situate, and vouchers, securities and documents of a registered corporation.

Special examination

184.-(1) The Minister, on the Minister's own motion or upon an application by any interested party being made in writing, may appoint any person to make a special examination and audit of a registered corporation's books, accounts and securities, and to inquire generally into the conduct of its business.

Evidence upon which inquiry to be ordered

(2) An application under subsection (1) shall be supported by such evidence as the Minister may require for the purpose of showing that there is good reason for requiring the investigation to be made and that it is not prompted by malicious motives.

Security for costs

(3) The Minister may require an applicant under subsection (1) to give security for the payment of the costs of the inquiry to be given before appointing the special examiner.

Powers of examiner

R.S.O.1980, c.411

(4) A special examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and inquiry, has the powers of a commission under Part II of the Public Inquiries Act, which Part applies as if the examination, audit or inquiry were an inquiry under that Act.

Report to Minister

(5) Upon the conclusion of the examination, audit and inquiry, the special examiner shall make a report in writing to the Minister.

Payment of costs

(6) The Minister may, on the conclusion of an examination under this section, order the registered corporation or the party requesting the examination under subsection (1) to pay costs of such examination.

Inquiries by Superintendent

185.-(1) The Superintendent or Director may address any inquiries under this Act to a registered corporation or to the president, secretary or any other officer thereof and, in the case of an extra-provincial corporation, also to its agent under section 32, for the purpose of ascertaining the corporation's condition and ability to meet it obligations or as to the conduct of its business or as to complaints made by depositors, borrowers or by persons for whom the registered corporation acts in a fiduciary capacity and it is the duty of a registered corporation or officer so addressed to reply promptly in writing to any such inquiry.

Notice to directors

(2) The Superintendent or Director may require a registered corporation to forward a copy of any letter addressed to the registered corporation by the Superintendent or Director and any answer thereto to each director of the corporation and,

upon such requirement being made, the secretary of the corporation shall include a copy of such letter and the answer thereto in the minutes of the meeting of the directors next following the requirement being made by the Superintendent or Director.

Extension of time

186. Where by or under this Act a registered corporation is required to provide or file with the Superintendent any return or document or other information, the Superintendent, in his or her absolute discretion and upon payment by the corporation of the prescribed fee, may before or after the last day for making the submission, extend the time therefor for such period not exceeding sixty days as he or she considers appropriate.

Notice as proof

187.-(1) A notice published in The Ontario Gazette over the name of the Superintendent is, without further proof, prima facie proof of the facts set forth in the notice.

Certificate as to registration

(2) A certificate of the Superintendent that on a stated day a body corporate mentioned therein was or was not registered or was registered subject to terms, conditions or restrictions, or that the registration of a corporation was revoked on a stated day, is prima facie proof of the facts stated in the certificate.

Certified copies

(3) Copies of, or extracts from, any book, record, instrument or document in the office of the Superintendent or of or from any instrument or document issued under this Act, if certified by the Superintendent to be true copies or extracts, shall be held as authentic and are prima facie proof of and have the same legal effect as the original.

Agreements with other Governments

188. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with the government of Canada or any province or territory in Canada, or the appropriate authority thereof, related to the administration and enforcement of this Act or of comparable legislation of any such other jurisdiction and, without restricting the generality of the foregoing, any such agreement may provide for the provision and exchange of information.

Capacity of Superintendent

189. The Superintendent may do all things necessary or incidental to the administration and enforcement of this Act and the regulations, and in particular, but without limiting the generality of the foregoing, may,

(a) enter into contracts with registered corporations related to the management and rehabilitation of such corporations;

(b) receive undertakings from extra-provincial corporations and enter into agreements with extra-provincial corporations; and

(c) enter into contracts with third parties related to the administration of this Act and the regulations and give indemnities to third parties related to such activities as are authorized under such contracts.

PART XII

ENFORCEMENT AND CIVIL REMEDIES

Director's orders

190.-(1) Where, in the opinion of the Director, a registered corporation or other person is committing any act or pursuing any course of conduct that,

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with a voluntary compliance program under section 196;

(d) does not comply with any undertaking given under this Act;

(e) constitutes a practice which might prejudice or adversely affect the interests of depositors or, if the corporation is a trust corporation, of persons for whom the corporation acts in a fiduciary capacity,

the Director may give notice to the registered corporation or other person of an intention to order the corporation or other person,

(f) to cease doing any act or to cease pursuing any course of conduct identified by the Director; or

(g) to perform such acts as in the opinion of the Director are necessary to remedy the situation.

Hearing

(2) The corporation or other person, by written notice served on the Director within fifteen days after the service of the notice on the corporation or other person under subsection (1), may require a hearing before the Director.

When order may be made

(3) Where no hearing is requested within the time set out in subsection (2) or (4), or where a hearing is held and the Director is of the opinion that an order described in clause (1)(f) or (g) should be made, the Director may make a permanent order under either of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Temporary order

(4) Notwithstanding subsection (2), where in the opinion of the Director the interests of the depositors or the public may be prejudiced or adversely affectd by any delay in the issuance of a permanent order, the Director may make a temporary order as described in clause (1)(f) or (g) which shall take effect immediately on its making and which shall become permanent on the sixth day after its making unless within that time a hearing before the Director is requested.

Hearing

(5) A request for a hearing under subsection (4) shall be in writing and served on the Director.

Extension of order

(6) Where a hearing is requested under subsection (4), the Director may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Copy to directors

(7) Where an order is made under this section, a copy of the order shall be sent to each director of the affected corporation.

Modification or revocation of order

(8) The Director, at any time, may revoke an order made under this section.

Appeals

191.-(1) A party to a hearing before the Director, within fifteen days after the receipt of the Director's decision, may appeal the decision to an appeal panel by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister forthwith of the request.

Idem

(2) An appeal shall be based on such evidence as may be presented to the appeal panel, and the panel, upon hearing an appeal, may confirm, vary or revoke the order that is the subject of the appeal.

Superintendent approvals

192.-(1) Where this Act provides for an approval or consent of the Superintendent, he or she may give or refuse such approval or consent and such approval or consent may be subject to such terms and conditions related thereto as the Superintendent may impose.

Final decision

(2) A decision by the Superintendent under this Act shall be in writing and is not subject to appeal to an appeal panel.

Hearing

(3) Before refusing an approval or consent or before granting an approval or consent subject to terms and conditions, the Superintendent shall give the registered corporation notice of his or her intention and the registered corporation may require a hearing before the Superintendent.

Power of Superintendent

(4) The Superintendent may at any time, having given the registered corporation an opportunity to be heard before him or her, confirm, revoke or vary any approval, consent or refusal.

Restriction on borrowing multiples

(5) The Superintendent may at any time, having given the registered corporation an opportunity to be heard, reduce the limit on its borrowing multiple authorized under section 155,

(a) that a registered trust corporation may receive by way of deposit or borrow to any amount, including a multiplier that is less than ten times its capital base; or

(b) that a registered loan corporation may borrow to any amount including a multiplier that is less than ten times its capital base.

Director may be party

193. The Director is entitled to attend and to be represented by counsel at any hearing before an appeal panel.

Transcript

194. Oral evidence taken before the Director, the Superintendent or an appeal panel may be recorded and, if recorded, copies of a transcript thereof shall be furnished upon request upon the same terms and for the same fees as in the Supreme Court.

Hearings *in camera*

195. A hearing before the Director, the Superintendent or an appeal panel, at the discretion of the Director, the Superintendent or the chairman of the panel, as the case may be, may be heard *in camera* or in public.

Voluntary compliance program

196.-(1) Where, in the opinion of the Superintendent, a registered corporation or other person is committing any act or pursuing any course of conduct that,

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with any undertaking given under this Act; or

(d) constitutes a practice that might prejudice or adversely affect the interests of depositers or persons for whom the registered corporation, if a trust corporation, acts in a fiduciary capacity,

the registered corporation or other person, may enter into a program of voluntary compliance related to any act or course of conduct described in clause (a), (b), (c) or (d).

Idem

(2) A voluntary compliance program under this section shall be in writing and shall bind the registered corporation or other person from the time it is approved by the Superintendent.

Powers of Director and Superintendent not affected

(3) Where a voluntary compliance program has been entered into, the Director shall not be prevented from making orders against the registered corporation or other person,

(a) on matters not covered by the program;

(b) where the program is not complied with, on matters covered in the voluntary compliance program;

(c) if there has been a deterioration in the condition of the registered corporation; or

(d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Superintendent at the time the program was entered into.

Modification of program

(4) The Superintendent on the request of a registered corporation, may approve the alteration of a voluntary compliance program entered into under this section.

Cancellation of registration

197.-(1) Where,

(a) a registered corporation or other person has not complied with an order of the Director or of an appeal panel;

(b) a registered corporation or other person has breached an order of the court made under section 208;

(c) grounds exist for the possession and control of a registered corporation by the Superintendent; or

(d) the registration of the corporation has been cancelled or suspended by a government of Canada or of any other province or territory of Canada,

the Director may revoke the registration of the corporation or impose terms, conditions or restrictions on the registration of the corporation.

Notice of intention

(2) Where the Director proposes to act under subsection (1), the Director shall serve a notice of the intention to act on the corporation.

Hearing

(3) Subsections 190(2) and (3) apply where a notice is served under subsection (2).

Corporation to cease business except for winding-up purposes

(4) After the revocation of a registration under this section, the corporation shall, unless again registered, cease to transact or undertake business in Ontario, except so far as it is necessary for the winding-up of its business, but any liability

incurred by it may be enforced against it as if such revocation had not taken place.

Notice on change of status

198.-(1) On the revocation of the registration of any corporation, or the modification of any of the terms, conditions or restrictions on its registration, the Director shall cause notice in writing thereof to be delivered to it.

Idem

(2) Where the corporation has had its registration revoked, the notice shall be published in The Ontario Gazette.

Orders imposing limitations and and conditions or for taking possession and control

199.-(1) Notwithstanding any other provision of this Act, the Lieutenant Governor in Council, without holding a hearing, may order,

(a) that a corporation's registration shall be subject to such terms, conditions and restrictions as are set out in the order; or

(b) that the Superintendent take possession and control of the assets of a registered corporation,

where, in the opinion of the Lieutenant Governor in Council, one or more of the following has occurred:

1. There has been, on or after the 21st day of December, 1982, a transfer or issue of shares to which subsection 63(1) or (2) applies and the consent of the Superintendent has not been obtained under section 63.

2. The corporation has defaulted on payment of any of its liabilities.

3. The corporation is not complying with this Act or the regulations made under this Act.

4. The corporation's assets are not satisfactorily accounted for.

5. The corporation's assets are not sufficient, having regard to all the circumstances, to give adequate protection to the corporation's depositors.

6. There exists any practice of or state of affairs within the corporation that is or may be prejudicial to the public interest or to the interests of the corporation's depositors, creditors or shareholders.

Delivery of order

(2) Where the Lieutenant Governor in Council makes an order under subsection (1), the Superintendent shall deliver a copy of the order to an officer of the registered corporation.

Order final and binding

(3) An order of the Lieutenant Governor in Council under subsection (1) shall take effect immediately and the order is final and binding and no such order or any order made under subsection (5), confirming or varying such order shall be stayed, varied or set aside by any court.

Appointment of appraiser

(4) For the purposes of this section, the Lieutenant Governor in Council may appoint such persons as the Lieutenant Governor in Council considers necessary to value and appraise the assets and liabilities of the corporation and report upon its condition and its ability, or otherwise, to meet is liabilities.

L.G. in C. may confirm, vary or rescind orders

(5) Upon the petition of any party or person interested, filed with the Clerk of the Executive Council within sixty days after the date of any order made under subsection (1), the Lieutenant Governor in Council may confirm, vary or rescind the whole or any part of such order and an order confirming or varying an order made under subsection (1) is final and binding.

Limitation

(6) Where the Lieutenant Governor in Council makes an order under clause (1)(b) and the corporation is other than a provincial corporation, the order shall be limited to the possession and control of assets in Ontario.

Application

(7) Where the Lieutenant Governor in Council makes an order under subsection (1) and the corporation is other than a provincial corporation, section 200 applies to the corporation as if it were a provincial corporation.

Saving

(8) Nothing in this section affects the right of the Lieutenant Governor in Council to vary or rescind, at any time, an order made under subsection (1).

Power of Superintendent upon taking control

200.-(1) If so ordered by the Lieutenant Governor in Council under section 199, the Superintendent shall take possession and control of the assets of a registered corporation and shall thereafter conduct its business and take such steps as in the Superintendent's opinion should be taken toward its rehabilitation or, where an order is made under paragraph 1 of subsection 199(1), its continued operation, and for such purposes the Superintendent has all the powers of the board of directors of the corporation, and without limiting the generality of the foregoing, the Superintendent may,

(a) exclude the directors, officers, servants and agents of the corporation from the premises, property and business of the corporation; and

(b) carry on, manage and conduct the operations of the corporation and in the name of the corporation preserve, maintain, realize, dispose of and add to the property of the corporation, receive the incomes and revenues of the corporation and exercise all the powers of the corporation.

Application to court

(2) While the Superintendent has possession and control of the assets of a corporation under this section, the Superintendent may apply to the court for an order for the winding up of the corporation under Part VI of the Corporations Act.

R.S.O.1980, c.95

Appointment of managers

(3) Where the Superintendent is in possession and control of the assets of a corporation and is conducting its business, he or she may appoint one or more persons to manage and operate the business of the corporation, and,

(a) each person so appointed is a representative of the Superintendent; and

(b) the remuneration of any such person, other than an officer or employee of the Ministry shall be fixed by the Superintendent.

Relinquishing control

(4) Whenever the Lieutenant Governor in Council believes that a corporation whose assets are in the possession and control of the Superintendent meets the requirements of this Act and that it is otherwise proper for the corporation to resume possession and control of its assets and the conduct of its business, the Lieutenant Governor in Council may, in writing, direct the Superintendent to relinquish to the corporation the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Where rehabiliation efforts futile

(5) If the Lieutenant Governor in Council considers that further efforts to rehabilitate a corporation whose assets are in the possession and control of the Superintendent would be futile, the Lieutenant Governor in Council may, in writing, direct the Superintendent to relinquish to the corporation the possession and control of its assets, and from and after the date specified in such direction the powers of the Superintendent under this section cease.

Expenses of proceedings

(6) The expenses of the Superintendent incurred in proceedings under this section or section 198 or 199 shall be paid,

(a) by the registered corporation; or

(b) where the corporation that is the subject of the proceeding,

(i) is a loan corporation and the corporation cannot pay the full cost of the proceedings, by all registered loan corporations, or

(ii) is a trust corporation and the trust corporation cannot pay the full cost of proceedings, by all registered trust corporations,

and, where clause (b) applies, the share of each registered corporation shall be in the same proportion as its total assets in its last preceding fiscal year bears to the total of all loan corporations or trust corporations, as the case may be, in the last preceding fiscal year of each.

Advisory committee

(7) The registered corporations required by clause (6)(b) to bear the expenses of the Superintendent may appoint a committee of not more than six members to advise the Superintendent in respect of all matters pertinent to the rehabilitation of the corporation whose assets are in the possession and control of the Superintendent.

Application to court

201.-(1) Notwithstanding any other provision of this Act, where the Superintendent has taken possession and control of a registered corporation under section 199, the Superintendent may apply to the High Court of Justice for an order,

(a) authorizing some other person to conduct the business of the corporation on such terms and conditions as the court thinks fit;

(b) authorizing and directing the sale of the assets of the corporation in whole or in part notwithstanding any provision of the Bulk Sales Act;

R.S.O.1980, c.52

(c) appointing interim or permanent substitute trustees in respect of all or any part of the fiduciary obligations and duties of the corporation;

(d) authorizing or directing such other action as the court thinks appropriate and in the best interests of the depositors, persons for whom the corporation acts in a fiduciary capacity, the creditors and the public; or

(e) staying any civil proceedings against the corporation while the Superintendent is in possession and control of the corporation.

Substituted fiduciary

(2) Where the High Court of Justice has made an order under subsection (1)(c), the fiduciary obligations and duties vest in, bind and may be enforced against the substituted fiduciary as fully and effectually as if the substituted fiduciary was originally named as fiduciary.

Orders, etc., binding on successors and assignees

202. Where an order or approval is made or given under this Act or a term, condition or restriction is imposed on its registration, it is binding on every successor or assignee of the corporation or other person to whom it is directed.

Over-valued property

203. If in the opinion of the Director with respect to a registered corporation or its subsidiaries, it appears that,

(a) the value placed upon the real estate owned by the corporation or any of its subsidiaries or any parcel thereof is too great;

(b) that the amount secured by mortgage upon any parcel of real estate, together with interest due and accrued thereon is greater than the lending value of the parcel, or that the parcel is not sufficient security for the loan and interest; or

(c) the market value of any other investment is less than the amount shown in the books of the corporation or any of its subsidiaries,

the Director may require the corporation to secure an appraisal of such assets by one or more competent valuators or the Director may procure such appraisal at the expense of the corporation.

Idem

(2) If following an appraisal under subsection (1), it appears the value of the asset is less than the amount at which it is carried on the books of the registered corporation or any of its subsidiaries or that the value is not adequate security for the loan and interest, the Director may order that the appraised value be reflected in calculations made for the purposes of this Act and the regulations.

Idem

(3) An order of the Director under subsection (2) shall be noted in the financial statement of the registered corporation.

Investigation

204.-(1) Where upon a statement made under oath it appears probable to the Superintendent that any corporation or other person has contravened any of the provisions of this Act or the regulations, the Superintendent by order, may appoint any person to make such investigation as the Superintendent considers expedient for the due administration and enforcement of this Act, and in the order shall determine and prescribe the scope of the investigation.

Scope investigation

(2) For the purpose of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(a) the affairs of the person or corporation in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the corporation or other person and any property, assets or things owned, acquired or alienated in whole or in any part by the corporation or other person or by any person or corporation acting on behalf of or as agent for the person or corporation; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the corporation or other person and the relationship that may at any time exist or have existed between the corporation or other person and any other person by reason of investments, purchases, commissions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

Powers to summon witnesses and require production

(3) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court and no provision of the Evidence Act exempts any bank or loan or trust corporation or any officer or employee thereof from the operation of this section.

R.S.O.1980, c.145

Counsel

(4) A person giving evidence at an investigation under this section may be represented by counsel.

Seizure of property

(5) Where an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the corporation or other person whose affairs are being investigated.

Inspection of seized documents

(6) Where any documents, records, securities or other property are seized under subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the corporation or other person from whom seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or corporation to the person appointed to make the investigation.

Accountants and experts

(7) Where an investigation is ordered under this section, the Superintendent may appoint an accountant or other expert to examine documents, records, properties and matters of the person or corporation whose affairs are being investigated.

Reports of investigation

(8) Every person appointed under subsection (1) or (7) shall provide the Superintendent with a full and complete report of the investigation including any transcript of evidence and material in his or her possession relating to the investigation.

Application of R.S.O.1980, c.274

205. Section 8 of the Ministry of Consumer and Commercial Relations Act applies to every person appointed under subsection 204(1) or (7).

Order to freeze property

206.-(1) The Superintendent may,

(a) where the Superintendent is about to order an investigation in respect of a corporation or other person under section 204 or during or after an investigation in respect of a person or corporation under section 204;

(b) where the Director is about to make or has made a decision revoking the registration of any corporation; or

(c) where proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against any corporation or other person, that in the opinion of the Superintendent are connected with or arise out of any business conducted by the corporation or other person,

by any method that provides a written or printed copy, direct any corporation or other person having on deposit or under control or for safekeeping any funds, securities or assets of the corporation or other person referred to in clause (a), (b) or (c) to hold such funds or securities or assets or direct the corporation or other person referred to in clause (a), (b) or (c) to refrain from withdrawing or dealing with any such funds, securities or assets from any other person having any of them on deposit, under control or for safekeeping or to hold all funds, securities or assets in their possession or control in trust for the Superintendent, or until the Superintendent in writing revokes the direction or consents to release any particular fund or property from the direction.

Idem

(2) A direction issued under subsection (1) does not apply to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the

direction expressly so states, and in the case of a bank or a loan or trust corporation, the direction applies only to the offices, branches or agencies thereof named in the direction.

Application for directions

(3) Any person or corporation named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular funds, securities or assets, may apply to the Superintendent for an order of clarification.

Revocation or amendment of direction

(4) Upon the application of a registered corporation or other person directly affected by a direction issued under subsection (1), the Superintendent may make an order on such terms and conditions as he or she may impose revoking the direction or consenting to the release of any fund or security.

Notice to land registry offices

(5) In any of the circumstances mentioned in clause (1)(a), (b) or (c), the Superintendent may by any method that provides a written or printed copy notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the corporation or other person referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned therein and has the same effect as the registration or recording of a certificate pending litigation or a caution, and the Superintendent may in writing revoke or modify the notice.

Liability for short-fall

207. Where the Director, under subsection 190(1), has ordered a registered corporation or any of its subsidiaries to dispose of and realize any of its investments and if the amount realized therefrom falls below the amount paid by it for such investments, the directors of the corporation are jointly and severally liable for the payment to the corporation of the amount of the deficiency, but if any director present when any such investment is authorized, forthwith, or if any director then absent, within twenty-four hours after he or she become aware of such investment, and is able to do so, enters his or her written protest against such investment, and within eight days thereafter notifies the Director in writing of the protest, the director of the corporation may thereby, but not otherwise, exonerate himself or herself from liability.

Order for compliance

208.-(1) Where it appears to the Superintendent that any registered corporation or other person has failed to comply with or is not complying with,

(a) any approval given or any order made under this Act or the regulations;

(b) any voluntary compliance program entered into; or

(c) any term, condition or restriction imposed on its registration,

the Superintendent, in addition to any other rights under this Act, may apply to the High Court of Justice for an order,

(d) directing the person or corporation to comply with the decision, program or order or restraining the person or corporation from violating the approval, program, order, term, condition or restriction; and

(e) directing the directors and officers of the person or corporation to cause the person or corporation to comply with or to cease violating the terms and conditions of any approval, any voluntary program or order of the Director or Superintendent, or term, condition or restriction imposed on its registration,

and the court may make such order as it considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Oppression remedy

209.-(1) A depositor, shareholder, creditor, a person for whom the registered corporation acts in a fiduciary capacity or the Superintendent may apply to the High Court of Justice for an order under this section.

Idem

(2) Where, upon an application under subsection (1), the court is satisfied that in respect of a registered corporation or any of its affiliates,

(a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;

(b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or

(c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any shareholder, depositor, creditor or person for whom the corporation acts in a fiduciary capacity, the court may make an order to rectify the matters complained of.

Notice to Superintendent

(3) Where a depositor, shareholder, creditor or person for whom the corporation acts in a fiduciary capacity makes an application under subsection (1), he or she shall give notice to the Superintendent.

Court order

(4) In connection with an application under this section, the court may make any interim or final order it thinks appropriate including, without limiting the generality of the foregoing,

(a) an order restraining the conduct complained of;

(b) an order to regulate a corporation's affairs by amending the by-laws;

(c) an order appointing directors in place of or in addition to all or any of the directors then in office;

(d) an order varying or setting aside a transaction or contract to which a registered corporation is a party and compensating the registered corporation or any other party to the transaction or contract;

(e) an order requiring a registered corporation, within a time specified by the court, to produce to the court or an

interested person financial statements or an accounting in such other form as the court may determine;

(f) an order compensating an aggrieved person;

(g) an order directing rectification of the records of a corporation; or

(h) an order requiring the trial of any issue.

Want of prosecution

210.-(1) An application made or an action brought or intervened in under section 209 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given upon such terms as the court thinks fit and, if the court determines that the interests of any person described in subsection 209(1) may be substantially affected by such stay, discontinuance, settlement or dismissal, the court may order any party to the application or action to give notice to the person.

Costs

(2) A person described in subsection 209(1), is not required to give security for costs in any application made or action brought or intervened in under that section.

Idem

(3) In an application made or an action brought or intervened in under section 209, the court may at any time order the registered corporation or any of its affiliates to pay to the shareholder, depositor, creditor or person to whom the corporation acts in a fiduciary capacity or Superintendent interim costs, including reasonable legal fees and disbursements, for which interim costs the complainant may be held accountable to the corporation or its affiliate upon final disposition of the application or action.

PART XIII

OFFENCES AND PENALTIES

Carrying on business of corporation prohibited

211.-(1) No person, other than a registered corporation, shall conduct, undertake or transact in Ontario the business of a loan corporation or of a trust corporation.

Carrying on business of trust corporation prohibited

(2) No body corporate, other than a registered trust corporation, shall offer its services to the public as, or accept or execute the office of,

(a) executor, administrator or trustee; or

(b) guardian of any minor's estate or committee of any mentally incompetent person's estate.

Restriction on use of name

(3) No person, other than a registered trust corporation, shall hold itself out to the public in Ontario as a registered trust corporation by using in its name the words "trust corporation", "trust company" or "trustco" or any similar words in its name in conjunction with its business or undertakings, unless such name was legally in use before the day this section comes into force.

Carrying on business by corporations

(4) No corporation, other than a registered corporation, shall hold itself out to the public in Ontario as a registered corporation by conducting, undertaking or transacting any part or aspect of the business of a trust corporation or loan corporation.

Matters deemed undertaking business

(5) No person, other than a registered corporation and a person duly authorized by it to act on its behalf, shall solicit the business of a trust corporation or loan corporation.

Action of promoters, etc.

(6) No person shall undertake, transact or solicit in Ontario any part or aspect of the business of a trust corporation or a loan corporation for a body corporate that is not registered under this Act.

Prohibition on certain activities

(7) No registered corporation, directly or indirectly, through a subsidiary or otherwise, unless permitted by or under this Act, shall,

(a) deal in goods, wares and merchandise or engage in any trade or business;

(b) provide letters of credit or like instruments;

(c) guarantee the performance of any obligation by a person other than the corporation; or

(d) issue notes of the corporation payable to bearer on demand and intended for circulation.

Offences

212.-(1) Every person who,

(a) contravenes any provision of section 211;

(b) fails to comply with any undertaking given under this Act;

(c) fails to comply with an order made under this Act;

(d) contravenes any provision of Part IX;

(e) allows their name to be used on behalf of a person having a beneficial interest in a corporation for the purpose of disguising such interest;

(f) contravenes the reporting requirements related to insider trading in respect of trust corporations or loan corporations;

(g) traffics in a shareholders list contrary to section 132;

(h) accepts or receives or gives a grant or gratuity or holds shares contrary to section 177; or

(i) in the case of a registered corporation, contravenes any term, condition or restriction imposed on its registration,

is guilty of an offence.

Penalty

(2) On conviction for an offence referred to in subsection (1) or subsection 60(4) or 61(5), the person convicted is liable on a first conviction to a fine of not more than $100,000 and on each subsequent conviction to a fine of not more than $200,000.

Derivative

(3) Every person who caused, authorized, permitted or participated in an offence referred to in subsection (1) or subsection 60(4) or 61(5) is guilty of an offence and on conviction is liable on a first conviction to a fine of not more than $100,000 and on each subsequent conviction to a fine of not more than $200,000.

Saving, voluntary compliance program

(4) Notwithstanding subsection (1), a person for whom a voluntary compliance program has been approved by the Superintendent who complies fully with such program shall not be prosecuted for or convicted of an offence in respect of the breach of this Act which the program was intended to remedy.

Saving, disclosure

(5) A person is not guilty of an offence under clause (1)(d) if the person was not a party to the offence and reported the failure to comply with Part IX as set out in section 149 or 150.

Limitation period

213. No proceeding for an offence under this Part shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Superintendent.

Order to comply

214. Where a person is guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken, in addition to any punishment it may impose, may order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

Restitution

215. Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

PART XIV

MISCELLANEOUS AND REGULATIONS

Deposits from persons unable to contract

216. A registered corporation, without the authority, aid, assistance or intervention of any other person or official being required, may receive deposits from any person regardless of the person's age, status or condition in life, and whether the person is qualified by law to enter into ordinary contracts or not, and from time to time may pay any or all of the principal thereof and any or all of the interest thereon to or to the order of the person, unless before payment, the money on deposit is claimed by some other person in a court proceeding to which the corporation is a party and in respect of which service of a statement of claim or other process orginating such proceeding has been made on the corporation, or in any other proceeding pursuant to which an injunction or order made by the court requiring the corporation not to make payment of such money or to make payment thereof to some person other than the depositor has been served on the corporation, and in the case of any such claim so made the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

Direction as to disposition of deposits on death

217.-(1) A person who has deposits with a registered corporation not exceeding $2,000 may, by a writing, signed by him or her and deposited with the corporation, nominate any person to receive the amount thereof at his or her death.

Rights of corporation

(2) Upon receiving a statutory declaration as to the death of a person who has made a nomination under subsection (1), the corporation may substitute on its books the name of the nominee in place of the name of such person or may forthwith pay to the nominee the amount due.

Where no direction

(3) Where a depositor as described in subsection (1) dies without making a nomination in accordance with that subsection, the deposit may, without letters probate or letters of administration being taken out, be paid or transferred to,

(a) the person who appears to the corporation to be entitled under the will of such depositor or in the case of intestacy under the law relating to devolution of property to receive it; or

(b) any person who appears to the corporation to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of the depositor,

upon receipt by the corporation of the statutory declaration of the person so claiming stating the time and place and death of the applicant and the facts supporting the claim.

Payments by mistake

218. Where a registered corporation, after the death of a depositor, has paid or transferred a deposit to the person who at the time appeared to be entitled thereto, the payment or transfer is valid with respect to any demand from any other person as the legatee or next of kin or as the lawful representative of the deceased against the corporation, but the legatee, next of kin or representative is entitled to recover the amount of the deposit from the recipient or transferee.

Delivery of notices

219.-(1) Delivery of any written notice or document for any purpose of this Act, where the mode is not otherwise specified, may be delivered by first class ordinary mail or first class registered mail,

(a) in the case of a registered corporation, addressed to it or its chief executive officer at its principal place of business;

(b) in the case of a director, addressed to the director at his or her address as shown on the records of the Superintendent; and

(c) in the case of the Superintendent, addressed to the Superintendent at his or her office.

Idem

(2) In the case of an extra-provincial

corporation, a notice or document may be delivered in accordance with clause (1)(a) or may be delivered by first class or registered mail addressed to it or its agent or any of its agents at the address thereof as set out in the most recent application filed under section 32.

Regulations

220. The Lieutenant Governor in Council may make regulations,

(a) prescribing forms and providing for their use;

(b) requiring the payment of fees for letters patent of incorporation and supplementary letters patent and in respect of any function performed by the Superintendent or Director under this Act or the regulations and prescribing the amounts thereof;

(c) exempting persons holding such percentage, as may be set out in the regulation, of shares of a corporation from the requirements of section 63;

(d) exempting classes of corporations from the requirements of section 63;

(e) respecting the records, papers and documents to be retained by corporations and the length of time they shall be so retained;

(f) requiring the disclosure to borrowers of terms and conditions of loans, mortgages and interest rates in lending transactions;

(g) prescribing words or expressions that are prohibited in the name of a corporation and prescribing conditions for the use of names by corporations;

(h) prescribing the information that shall be maintained in the Loan Corporations Register, the Trust Corporations Register and the public file of each corporation;

(i) governing the custody and safekeeping of securities, property or trust assets registered in the name of or held by a registered corporation;

(j) prescribing financial statements required under this Act;

(k) prescribing information to be publicly disclosed by a corporation;

(l) governing the reporting of information by the Trust Companies Association of Canada;

(m) prescribing the method of calculating the capital base of a corporation, including what assets may or may not be included therein and the manner in which the value of any such asset shall be calculated or determined for such purpose;

(n) prescribing the method of calculating the total assets of a corporation, including the manner in which the value of any such asset shall be calculated or determined for such purpose;

(o) prescribing classes of loans, investments or transactions for the purposes of Part IX;

(p) prescribing limits in dollar amounts or in a percentage of total assets of investments in any asset or any class of assets and where a limit has been imposed by this Act with respect to any asset or class of assets, prescribing limits that are more restrictive than those set out in the Act;

(q) prescribing the method of calculating liquidity of a corporation;

(r) governing the issue of subordinated notes;

(s) governing the establishment and operation of common trust funds and the investment of trust money in such funds;

(t) requiring the bonding and insurance coverage of and for directors, officers, agents and employees of corporation and of property of the corporation or held by it;

(u) governing the activities of a registered corporation in dealing with persons who act as agents for the corporation and governing the relationships between the corporation and its agents;

(v) prescribing terms and conditions for the establishment of subsidiaries;

(w) relating to reports by auditors;

(x) prescribing qualifications for appointment as an officer of a corporation; and

(y) prescribing any matter referred to in this Act as being prescribed by the regulations.

Exemption from minimum capital requirements

221. The Superintendent may exempt a trust corporation that in other respects complies with this Act from compliance with the minimum capital requirements under subsection 10(5) or clause 33(a), subject to such terms and conditions as may be prescribed and to such terms and conditions as the Superintendent may impose, so long as the trust corporation is offering its services primarily in a community that, in the opinion of the Superintendent, would not otherwise be adequately served by a trust corporation.

Transition, capital levels

222.-(1) Notwithstanding any other provision of this Act, where a corporation, immediately before the coming into force of clause 33(a) of this Act, was registered under the Loan and Trust Corporations Act, being chapter 249 of the Revised Statutes of Ontario, 1980, the minimum capital requirements under that clause shall not apply to the corporation until the 1st day of January, 1990.

Extension of time

(2) The Lieutenant Governor in Council may extend the period for compliance with minimum capital requirements under clause 33(a), beyond the

1st day of January, 1990, subject to such terms and conditions as the Lieutenant Governor in Council may impose.

Transition, directors

(3) Notwithstanding any other provision of this Act, the board of directors of a loan corporation or a trust corporation in office immediately before the coming into force of this section, may continue in office until the annual meeting next following the coming into force of this section.

Transition, quantum limits on investments

(4) Notwithstanding that an investment was made by a registered corporation or any of its subsidiaries before the coming into force of this Act, the corporation or subsidiary shall divest itself of the investment within twelve months of the coming into force of this Act, if the investment, had it been made after the coming into force of this Act, would exceed any limit imposed by section 161, 165 or 166.

PART XV

AMENDMENTS, REPEALS, COMMENCEMENT, SHORT TITLE

223.-(1) The Ministry of Consumer and Commercial Relations Act, being chapter 274 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

Advisory committees

6b. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-commitees.

(2) Section 8 of the said Act is repealed and the following substituted therefor:

Protection from personal liability

8.-(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, any officer or employee of the Ministry or any member of the Tribunal or anyone acting under the authority thereof for any act done in good faith in the execution or intended execution of such person's duty, or for any alleged neglect or default in the execution in good faith of such person's duty.

Idem

R.S.O.1980, c.393

(2) Subsection (1) does not, by reason of subsections 5(2) and (4) of the Proceedings Against the Crown Act, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted.

224. Subparagraph ii of paragraph 32 of subsection 1(1) of the Securities Act, being chapter 466 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

ii. administered by a trust corporation registered under the Loan and Trust Corporations Act, 1985 and consists of a common trust fund as defined in section 1 of that Act.

1985, c...

Repeals

225. The following are repealed:

1. The Loan and Trust Corporations Act, being chapter 249 of the Revised Statutes of Ontario, 1980.

2. The Loan and Trust Corporations Amendment Act, 1982, being chapter 62.

Commencement

226. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

227. The short title of this Act is the Loan and Trust Corporations Act, 1985.